83-101

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No._____

In the Supreme Court of the United States

October 1983 Term

Iowans for Tax Relief and **Don Carver**,
Appellants

vs.

The Campaign Finance Disclosure Commission and **Dan Johnston**,
Appellees.

On appeal from the Supreme Court of Iowa

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED BY APPEAL

ISSUE I.

Whether Chapter 56, The Code of Iowa (1979), is unconstitutional to the extent it purports to require disclosure of the identity of contributors to ballot issue campaigns, vis a vis candidate elections, where the state has made no showing of compelling and subordinating governmental interests which justify compelled disclosure of the names of contributors to ballot issue campaigns that outweigh the rights of speech and privacy of association of those contributors?

ISSUE II.

Whether application of the disclosure requirements contained in Chapter 56, The Code of Iowa (1979), is unconstitutional since there is a reasonable probability that compelled disclosure of the identities of Iowans for Tax Relief's members and contributors will subject them to threats, harassment or reprisals from either government officials or private parties?

ISSUE III.

Whether the Iowa Supreme Court erred in failing to strictly construe the definition of "political committee" contained in Section 56.2(6), The Code of Iowa (1979), and resolve the ambiguities of the statute in favor of Iowans for Tax Relief and its treasurer, Don Carver, where:

(a) The statute is a penal statute enforceable by criminal prosecution, and due process requires the statute provide sufficient notice of what conduct is proscribed; and

(b) The statute infringes upon First Amendment rights?

ISSUE IV.

Whether the Iowa Supreme Court erred in determining that the amendment to the definition of "political committee" contained in Section 56.2(6), The Code of Iowa, which amendment was enacted by the Iowa legislature after the alleged criminal conduct, could be retroactively applied to the conduct of Iowans for Tax Relief and its treasurer, Don Carver?

ISSUE V.

Whether the requirement that a nonpartisan organization of continuous existence file detailed reports every 30 days following an election until the organization is dissolved is an unconstitutional burden on associational rights of permanent organizations?

ISSUE VI.

Whether the Iowa District Court in a judicial review proceeding under Section 17A.19, The Code of Iowa (1979), the exclusive remedy for persons aggrieved by the actions of agencies such as the Campaign Finance Disclosure Commission, has subject matter jurisdiction over, and the power to stay, the Polk County Attorney, to whom the Commission referred an alleged violation of the reporting and disclosure requirements contained in Iowa Code Section 56.5 and 56.5, the Iowa Code (1979) for criminal prosecution?

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REPORT OF DECISION

Iowans for Tax Relief v. Campaign Finance Disclosure Commission, 331 NW2d 862 (Iowa 1983).

STATEMENT OF GROUNDS FOR JURISDICTION

The Campaign Finance Disclosure Commission filed a complaint against Iowans for Tax Relief, Don Carver, Treasurer, under Section 56.11, The Code of Iowa (1979) and, after hearing pursuant to Section 17A.12, The Code of Iowa (1979) the Commission referred the matter to the Muscatine and Polk County Attorneys for criminal prosecution. Iowans for Tax Relief and Don Carver filed a Petition for Review of Agency Action under Section 17A.19, The Code of Iowa (1979), in the Iowa District Court in and for Muscatine County against The Campaign Finance Disclosure Commission and the Polk and Muscatine County Attorneys. The Muscatine County District Court reversed the Commission and dismissed the complaint, which District Court decision was reversed by the Iowa Supreme Court.

The judgment of the Iowa Supreme Court was entered March 16, 1983, and rehearing denied April 18, 1983. Notice of Appeal was filed with the Clerk of the Iowa Supreme Court on July 8, 1983.

Jurisdiction of this appeal is conferred by 28 U.S.C. 1257(2). The Iowa Supreme Court sustained Chapter 56 against a challenge it is unconstitutional, which is raised in Issue I. Jurisdiction of the remaining issues is conferred by 28 U.S.C. 1257(3) which are properly included in the jurisdictional statement. *Mishkin v. New York*, 383 U.S. 502, 512, 16 L.Ed.2d 56, 86 S. Ct. 958 (1966).

CONSTITUTIONAL AND STATUTORY PROVISIONS

(Full text is found in the appendix at pp. 70-81.)

Article I, Section 9, Clause 3, Constitution of the United States.

Amendment 1, Constitution of the United States

Article I, Section 7, Constitution of the State of Iowa (1857).

Article I, Section 21, Constitution of the State of Iowa (1857).

Iowa Administrative Procedure Act, Section 17A.19, The Code of Iowa (1979).

Section 56.2(6) and (14), The Code of Iowa (1979).

Amendment to Section 56.2(6), The Code of Iowa (1979) Effective January 1, 1982, Acts, 1981 Regular Session, 69th General Assembly of the State of Iowa, Chapter 35, Section 1.

Section 56.5, The Code of Iowa (1979).

Section 56.6, The Code of Iowa (1979).

Amendment to Section 56.6, The Code of Iowa (1979) Effective January 1, 1982, Acts, 1981 Regular Session, 69th General Assembly of the State of Iowa, Chapter 35, Section 6.

Section 56.11, The Code of Iowa (1979).

STATEMENT OF THE CASE

Iowans for Tax Relief (Iowans) was organized in 1978 as a nonprofit corporation under Chapter 504A of the Iowa Code. It was organized for the purposes specified in its Articles of Incorporation which contained 12 purposes relating to limitations on taxing and spending at all levels of government, including amendment of the Iowa Constitution to limit taxes and spending. App. pp. 31, 95-6.

Every ten years the issue "Shall there be a Convention to revise the Constitution, and propose amendment or amendments to same?" appears on the ballot at the general election pursuant to Article X, Section 3, Constitution of the State of Iowa (1957).[1] This question was before the voters in 1980, and on May 27, 1980, the Board of Directors of Iowans resolved to organize The Yes For Less Taxes Committee for the purpose of conducting a campaign in support of the ballot issue as a means to achieve Iowans' purpose of achieving constitutional limits on taxing and spending. The 1980 Constitutional Convention Ballot Issue was vehemently opposed by government, including the Governor and Attorney General, and government employee unions including the Iowa State Education

[1]In 1964 Amendment 22 repealed the original Article X, Section 3 and adopted in lieu thereof a new Section 3 altering the formulation of the question and changing the manner in which amendments to the Constitution may be adopted.

Association (ISEA) and the Association of Federal, State, County and Municipal Employees (AFSCME). The office of the Attorney General, which has represented the Commission throughout these proceedings, actively opposed the Ballot Issue and Solicitor General Mark Shantz debated Iowans' director and Yes For Less co-chairman Cloyd Robinson during the campaign. The opposition organized The Committee to Protect the Constitution, which was chaired by Mrs. Rachel Fulton, wife of Jack Fulton, a former Lieutenant Governor and a commissioner of The Campaign Finance Disclosure Commission. App. pp. 44, 87, 89-93.

On the eve of the election, the commissioners, including Mr. Fulton, voted unanimously to file a complaint against Iowans, which was filed on election day, November 4, 1980. App. pp. 22-9, 87. Hearing was held pursuant to the Iowa Administrative Procedure Act, Sections 17A. 11-17, The Code of Iowa (1979) on December 16, 1980. At the hearing Iowans argued the definition of political committee in Section 56.2(6), The Code of Iowa (1979) did not apply to Iowans and other permanent organizations, and that Chapter 56 was unconstitutional on its face and as applied. The Hearing Officer stated on the record it was not the Commission's role to consider the constitutionality of Chapter 56. App. pp. 90.

On March 5, 1981, the Commission found reasonable grounds to believe a violation had occurred, and referred its recommendation of prosecution to the Polk and Muscatine County Attorneys "with said County Attorneys to determine venue of the matter."[2] App. pp. 30-8.

[2]The Commission's reference of the matter to the Polk County Attorney for prosecution was unlawful since Section 56.11(4), The Code of Iowa (1979) provides for venue "in the district court in and for the county in which the accused resides", and all concede the accused treasurer, Don Carver, is a resident of Muscatine County (which is also the principal place of business of Iowans for Tax Relief). App. p. 92. Section 336.2(2), The Code of Iowa (1979) sets forth a county attorney's authority to appear in criminal prosecutions which authority is limited to proceedings in his county unless transferred to another county on a change of venue from his county. Section 56.11(3) and (4), The Code of Iowa (1979) provide the prosecution can be referred by the Commission to the Attorney General or a private attorney, as well as the County Attorney, and the public interest is protected from a less than spirited prosecution by a local county attorney.

On March 30, 1981, Iowans for Tax Relief and Don Carver commenced an action under the Iowa Administrative Procedure Act, Section 17A.19, The Code of Iowa (1979). This procedure is the exclusive remedy of persons like Iowans and Carver who are aggrieved by action of state agencies. Section 17A.19, The Code of Iowa (1979); *Salsbury Laboratories v. Iowa Department of Environmental Quality*, 276 NW2d 830, 833-4 (Iowa 1979). Iowans' Petition raised as grounds for relief pursuant to Section 17A.19(4)(b), The Code of Iowa (1979), the unconstitutionality of Chapter 56, on its face and as applied to Iowans (Recasted Petition for Review of Agency Action[3] App. pp. 82-8) and further claimed that Iowans, like other permanent organizations, was not a "political committee" as defined in Section 56.2(6), The Code of Iowa (1979) since it was not "organized for the purpose of" supporting a ballot issue as required by that section. Iowans also sought declaratory relief pursuant to Section 17A.19(8), The Code of Iowa (1979) declaring that forced disclosure of the names of Iowans' contributors or members would chill and infringe their constitutional rights, that Chapter 56 was unconstitutional since there was no compelling governmental interest justifying disclosure of contributions to ballot issue committees, and that the provisions of Chapter 56 requiring the detailed filing of receipts and disbursements every 30 days until dissolution would be an unconstitutional burden on the rights of permanent organizations. (Recasted Petition, paragraph 15(a)-(g), App. pp. 85-6.)

While Iowans' action was pending, the Commission recommended and obtained passage of amendments to Section 56.2(6), The Code of Iowa (1979), deleting the clause "organized for the purpose of" from the definition of "political committee", and adding a provision setting forth specific procedures for reporting by permanent organizations. Acts, 1981 Regular Session, 69th General Assembly of the State of Iowa, Chapter 35, Sections 1 and 6. App. pp. 46-7, 74, 79, 97-8.

The district court recognized the important constitutional

[3]Iowans Recasted Petition removed certain factual allegations and is otherwise identical to the original Petition.

issues raised by Iowans, but determined the case on the statutory construction of the term "political committee" under Section 56.2(6). Properly recognizing that Chapter 56 must be strictly construed since it is a penal statute, and affects freedom of expression, the district court read Section 56.2(6) as applying to temporary organizations "organized for the purpose of" supporting a ballot issue, vis a vis permanent organizations. App. pp. 48-9. Obviously, the district court did not view the Commission's amendments as applying to the conduct of Iowans prior to the enactment or effective date of those amendments. Rather, the district court viewed the Commission's recommended amendments as admissions that permanent organizations were not covered by the statute applicable in 1980. App. pp. 46-7.

On appeal, a five to four majority reversed. The majority ruled Section 56.2(6), The Code of Iowa (1979) applied to any group which had as its function the receipt or expenditure of money for the purpose of supporting or opposing a ballot issue. 331 NW2d at 865-6, App. pp. 55-6. The Iowa Supreme Court refused to strictly construe Section 56.2(6) stating the rule of strict construction of penal statutes did not apply because the definition of "political committee" was not ambiguous (despite receiving different constructions by the district court, the Supreme Court majority, the dissent and the Commission), and did not address the First Amendment requirement of strict construction. 331 NW2d at 865, App. p. 55. The Court then determined the Commission's 1981 amendment clarified the statutory definition of "political committee", applying the amendment retroactively to Iowans. 331 NW2d at 867, App. pp. 58-9. The Court held disclosure was not unconstitutional in ballot issue elections, and that the law was not unconstitutional as applied to Iowans. 331 NW2d at 868, App. pp. 59-61. The Court did not address the constitutionality of the perpetual filing requirement.

Four members of the Iowa Supreme Court dissented, construing Section 56.2(6) as requiring proof of the organization's purpose or motive in supporting the ballot issue. 331 NW2d at 869-70, App. pp. 62-3. Iowans' Petition for Rehearing reurged

the need for strict construction given the ambiguity of Section 56.2(6), the Commission's failure to sustain its burden to justify compelled disclosure in ballot issue campaigns, and that the Iowa Supreme Court had overlooked, and apparently overruled, the case of *Knight v. Iowa District Court of Story County*, 269 NW2d 430, 434 (Iowa 1978).[4]

STATEMENT OF SUBSTANTIALITY OF QUESTIONS

The frequency with which this Court has addressed campaign finance regulation since *Buckley v. Valeo*, 424 U.S. 1, 46 L.Ed.2d 659, 96 S. Ct. 612 (1976) is strong evidence of the substantiality of the questions presented by this appeal. Campaign regulation treads on constitutionally protected rights of speech and association, and, indeed, strikes at the heart of our democratic system of government. Despite the attention election regulation has received in constitutional litigation, this Court has never decided the issue whether it is constitutional to require disclosure of the identity of contributors to a ballot issue campaign. The compelling interests advanced to justify disclosure of the identify of contributors to candidates do not apply to the referenda. *FEC v. National Right to Work Committee*, Footnote 7, ____ U.S. ____, ____, 74 L.Ed.2d 364, 377, 103 S. Ct. 552, 561 (1982); *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 790, 55 L.Ed.2d 707, 98 S. Ct. 1407 (1978); *Buckley v. Valeo*, 424 U.S. 1, 66-68, 46 L.Ed.2d 659, 96 S. Ct. 612 (1976).

The record in this case was made in an informal agency hearing conducted pursuant to the Iowa Administrative Procedure Act, Section 17A.11-17, The Code of Iowa (1979), before a hearing officer who expressed the view that the constitutionality of Chapter 56 was a matter for the courts. The undisputed evidence adduced in that environment shows,

[4]The Iowa Supreme Court cited *Barnett v. Durant Community School District*, 249 NW2d 626, 629 (Iowa 1977) for the proposition an amendment can clarify a statute. However, Iowans, both in its brief, and on rehearing, cited the subsequent case of *Knight v. Story County*, which held penal statutes could not be clarified by subsequent amendment since the amendment could not provide notice as to conduct occurring prior to the amendment.

without contradiction, that many of Iowans' supporters rightfully fear compelled disclosure of their names will subject them to threats, harassment or reprisal from government officials or private citizens. *Brown v. Socialist Workers 74 Campaign Committee*, ____ U.S. ____, 74 L.Ed.2d 250, 257, 103 S. Ct. 416, 420-1 (1982); *Buckley v. Valeo*, 424 U.S. 1, 74, 46 L.Ed.2d 659, 96 S. Ct. at 612 (1976).

The Iowa Supreme Court's refusal to strictly construe the definition of "political committee" in Section 56.2(6), The Code of Iowa (1979) is at odds with traditional notions of due process and notice. A willful violation of the reporting and disclosure requirements of Sections 56.5 and .6, The Code of Iowa (1979) is a serious misdemeanor punishable by one year's imprisonment or a $1,000 fine, or both. Sections 56.16 and 903.1(2), The Code of Iowa (1979). Due process requires a criminal statute provide adequate notice. *Buckley v. Valeo*, 424 U.S. 1, 77, 46 L.Ed.2d 659, 96 S. Ct. 612 (1976); *Smith v. Goguen*, 415 U.S. 566, 572-3, 39 L.Ed.2d 605, 94 S. Ct. 1242 (1974); *Knight v. Iowa District Court of Story County*, 269 NW2d 430, 434 (Iowa 1978). An even greater degree of specificity is required when First Amendment rights are involved. *Buckley v. Valeo*, 424 U.S. 1, 77, 46 L.Ed.2d 659, 96 S. Ct. 612 (1976); *Smith v. Goguen*, 415 U.S. 566, 573, 39 L.Ed.2d 605, 94 S. Ct. 1242 (1974).

The retroactive application of the 1981 amendments to Chapter 56 to Iowans' conduct in 1980 cannot be allowed to stand. No litigant, including the government, can recommend and obtain passage of an amendment to a penal statute, pendente lite, which changes an element of a criminal offense, and have it retroactively applied to the detriment of the accused. Article I, Section 9, Clause 3, United States Constitution; Article I, Section 21, Constitution of the State of Iowa (1857); *Weaver v. Graham*, 450 U.S. 24, 28-9, 67 L.Ed.2d 17, 101 S. Ct. 960 (1981). The prohibition against ex post facto laws is necessary to assure that legislative acts give fair warning of their effect, and to restrict government power by restraining arbitrary and potentially vindictive legislation. *Weaver v. Graham*, 450 U.S. 24, 28-9, 67 L.Ed.2d 17, 101 S. Ct. 960

(1981). The Iowa Supreme Court, by concluding the amendment to the definition of "political committee" could clarify the statute, has violated these constitutional prohibitions, and implicitly overruled its prior decision in *Knight v. Iowa District Court of Story County*, 269 NW2d 430, 434 (Iowa 1978).

The disclosure requirements in Section 56.6, The Code of Iowa (1979), which require an organization to file a detailed list of receipts and disbursements every 30 days until the organization dissolves, prove Chapter 56, The Code of Iowa (1979), was intended to apply only to temporary organizations organized for the purpose of a single campaign. If Section 56.2(6), The Code of Iowa (1979), does apply to permanent organizations while they have the function of receiving contributions and making expenditures, then the constitutionality of the perpetual disclosure requirement imposed on permanent organizations must be struck down.

I. Facial Invalidity of Ballot Issue Disclosure

This Court has never decided the issue whether there is a compelling and subordinating governmental interest justifying compelled disclosure of contributors to ballot issue campaigns. The candidate campaign disclosure requirements addressed in *Buckley v. Valeo*, 424 U.S. 1, 60-84, 46 L.Ed.2d 659, 96 S. Ct. 612 (1976) were not challenged as unconstitutional per se, but on vagueness and overbreadth grounds.

The state has the burden to show compelling and subordinating interests, *Buckley v. Valeo*, 424 U.S. 1, 64, 46 L.Ed.2d 659, 96 S. Ct. at 612 (1976); *NAACP v. Alabama*, 357 U.S. 449, 463, 2 L.Ed.2d 1488, 78 S. Ct. 1163 (1958). Three interests were found sufficient in general to justify disclosure:

1. Enhancement of voters' knowledge about a candidate's possible allegiances and interests;
2. Deterrence of actual and apparent corruption; and
3. Enforcement of contribution limitations.

Brown v. Socialist Workers '74 Campaign Committee, ____ U.S. ____, ____, 74 L.Ed.2d 250, 256, 103 S. Ct. 416, 420 (1982); *Buckley v. Valeo*, 424 U.S. 1, 66-8, 46 L.Ed.2d 659, 96

S. Ct. 612 (1976).

The interest in enforcing contribution limitations is inapplicable since Iowa imposes no limitation on the amount of campaign contributions. *Brown v. Socialist Workers '74 Campaign Committee*, Footnote 8, ____ U.S. ____, ____, 74 L.Ed.2d 250, 256, 103 S. Ct. 416, 420 (1982). The other interests relate to candidate elections, and are inapplicable in the context of ballot issues. *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 790, 55 L.Ed.2d 707, 98 S. Ct. 1407 (1978); *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290, 296-299, 70 L.Ed.2d 492, 102 S. Ct. 434 (1981). Additionally, the interest in preserving voter confidence in the ballot measure process advanced in *Berkeley*, 454 U.S. at 299, is not applicable where, as here, the ballot issue supported by Iowans was defeated. The *Berkeley* case involved contribution limitations. That case did not approve disclosure of contributors to ballot issues, but rejected the claim that providing information about supporters and opponents of ballot measures was a compelling interest justifying the contribution limitations since disclosure would be a less restrictive alternative. 454 U.S. at 298-9.

II. Disclosure Will Subject Iowans to Threats, Harassment or Reprisal.

Compelled disclosure of the names of contributors to Iowans will subject many of those contributors to threats, harassment or reprisals from government or private individuals. *Brown v. Socialist Workers '74 Campaign Committee*, ____ U.S. ____, ____, 74 L.Ed.2d 250, 257, 103 S. Ct. 416, 420-1 (1982); *Buckley v. Valeo*, 424 U.S. 1, 74, 47 L.Ed.2d 405, 96 S. Ct. 1155 (1976).

The record before the Commission shows government, and government employee unions, are bitterly opposed to Iowans, and campaigned actively against the ballot issue. The Attorney General and his staff, the same office which has represented the Commission throughout these proceedings, actively engaged in the campaign against the 1980 ballot issue.

Iowans has many members who are government employees, or who do business with governmental units who will be subject to threats, harassment and reprisals if their support of Iowans is made public. App. pp. 89-95.

Buckley recognized new political parties must be allowed flexibility in their proof of reprisals and acknowledged the difficulty of finding "witnesses who are too fearful to contribute but not too fearful to testify about their fear." 424 U.S. at 74. Here, the uncontradicted record shows many government employees will be harassed by their co-workers, and many individuals who do business with government will lose that business if their support of Iowans is made public.

III. The Statute Must Be Strictly Construed

Due process requires a criminal statute provide adequate notice, and a greater degree of specificity is required when First Amendment rights are involved. *Buckley v. Valeo*, 424 U.S. 1, 77, 46 L.Ed.2d 659, 96 S. Ct. at 612 (1976). The Iowa Supreme Court's conclusion the statute is not doubtful or ambiguous, 331 NW2d at 865, App. p. 55, is refuted by the different constructions given by the dissenters and the district court.

The district court properly construed Section 56.2(6) as applying to temporary organizations organized for the purpose of a specific campaign. The district court relied on the Commission's recommended amendments to Chapter 56 which deleted the "organized for the purpose of" clause, and then made special reporting provisions for permanent organizations now brought within the purview of the statue (which, incidentally, requires the permanent organization to set up a separate ballot issue committee, the identical procedure followed by Iowans). App. p. 47.

The Commission has not been consistent in its construction of Section 56.2(6). It recommended the amendment to the legislature because:

> Current law defines the covered committees as only those organized for the purpose of such activity.

> Therefore, organizations organized originally for purposes other than political activity (such as trade associations, chambers of commerce, professional groups) could expend funds to promote or oppose candidates or ballot issues and circumvent the disclosure intended by Chapter 56 in the public interest. App. pp. 97-8.

Ten judges have construed Section 56.2(6), The Code of Iowa (1979) three different ways. Due process requires the narrow construction of the district court be applied to Iowans, not the broad formulation of the Iowa Supreme Court majority.

IV. Retroactive Application of Commission's Recommended Amendment.

The prosecutor cannot change a penal statute pendente lite and have it retroactively apply to the detriment of the accused. *Weaver v. Graham*, 450 U.S. 24, 28-9, 67 L.Ed.2d 17, 101 S. Ct. 960 (1981). The Commission's recommended amendments to Chapter 56 recognized permanent organizations were not "political committees" and deleted the "organized for the purpose of" clause. Acknowledging the problems with the requirement under Section 56.6(1), The Code of Iowa (1979) that a ballot issue committee file a detailed disclosure report every 30 days in perpetuity until it dissolves, the Commission recommended a new Section 56.6(6) providing special reporting requirements for permanent organizations. These amendments were effective January 1, 1982. They cannot be retroactively applied to Iowans' conduct in 1980, and could not have provided notice to Iowans as to what the statute proscribed.

V. The Perpetual Filing Requirement is Unconstitutional

The provisions of Section 56.6(1), The Code of Iowa (1979) which require a ballot issue committee to file a disclosure report every 30 days until it dissolves, are unconstitutional. No governmental interest has been advanced to justify requiring a permanent organization to file a detailed report showing contributions in excess of $25 and expenditures in excess of

$5.00 every 30 days until it dissolves.

Furthermore, there must be a substantial relation between the government interest and the information required to be disclosed. *Buckley v. Valeo*, 424 U.S. 1, 64, 46 L.Ed.2d 659, 96 S. Ct. 612 (1976). The Commission has failed to justify application of the perpetual disclosure requirement to a permanent organization temporarily engaging in political activity.

VI. The District Court Has Jurisdiction Over the Polk County Attorney.

The Iowa Supreme Court, by holding Iowans could not acquire jurisdiction over the Polk County Attorney by a Petition for Review of Agency Action under the Administrative Procedure Act, has left Iowans helpless to defend attempts by the Polk County Attorney to enforce the Commission's recommendation. A Petition for Review of Agency Action under the Iowa Administrative Procedure Act, Section 17A.19, The Code of Iowa (1979) is the exclusive remedy of persons aggrieved by agency action. Section 17A.19(5) grants the district court power to stay enforcement of agency action, and this necessarily includes jurisdiction over the instrumentalities of enforcement.

The district court recognized its power under Section 17A.19(5) when it stayed the Polk County Attorney, and quashed a Polk County Grand Jury Subpoena Duces Tecum directing the production of the information Iowans claimed was protected by the Constitution. Although this is not a constitutional issue but rather a question of state procedure, the issue must be addressed in order to keep the other constitutional issues from being rendered moot by another attempt by the Polk County Attorney to enforce Chapter 56.

CONCLUSION

Iowans for Tax Relief respectfully requests that this Court make an unrestricted notation of probable jurisdiction of the appeal so it may give plenary consideration to the important questions presented, with briefs on the merits and oral argument.

Respectfully submitted.

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ATTORNEYS FOR
APPELLANTS

Complaint filed with Campaign Finance Disclosure Commission, November 4, 1980.

BEFORE THE CAMPAIGN FINANCE DISCLOSURE COMMISSION OF THE STATE OF IOWA

Campaign Finance Disclosure Commission,	)	
COMPLAINANT,	)	NO. 73
v.	)	
Iowans for Tax Relief Don Carver, Treasurer 514 E. 2nd, Box 747 Muscatine, Iowa 52761,	)	NOTICE
RESPONDENT.	)	

YOU ARE HEREBY NOTIFIED that the Campaign Finance Disclosure Commission has filed a complaint against Iowans for Tax Relief, a copy of which is enclosed.

YOU ARE FURTHER NOTIFIED that the Campaign Finance Disclosure Commission under section 56.11, Code 1979, has the authority to conduct a hearing, and shall have the power to subpoena and review all records of a candidate or political committee required to be kept under this chapter.

YOU ARE FURTHER NOTIFIED that a hearing on whether the Respondent has engaged in any act or practice which constitutes violations of sections 56.5 and 56.6, Code 1979, as alleged will be held in Des Moines, Iowa on the 19th day of November, 1980 at 10:00 a.m. in the Colony Building located at 507 10th Street, for the purpose of taking such evidence as is necessary to make a determination in this matter.

YOU ARE FURTHER NOTIFIED that you are entitled to appear at the time and place set forth above and to give what-

ever evidence you desire and that you are entitled to be represented by counsel, and that you are entitled to a closed hearing at your request.

YOU ARE FURTHER NOTIFIED that a copy of the Commission's Rules of Procedure have been sent to you and that all parties to this matter shall be bound thereby.

YOU ARE FURTHER NOTIFIED that if you as the Respondent fail to appear, the Campaign Finance Disclosure Commission as presiding hearing officer may proceed with the hearing and make a decision in the matter which could be against your interest.

Dated this 4th day of November, 1980.

Kay Williams
Executive Director
Campaign Finance Disclosure
Commission

BEFORE THE CAMPAIGN FINANCE DISCLOSURE COMMISSION OF THE STATE OF IOWA

Campaign Finance Disclosure Commission,	)	
COMPLAINANT,	)	NO. 73
v.	)	
Iowans for Tax Relief Don Carver, Treasurer 514 E. 2nd, Box 747 Muscatine, Iowa 52761,	)	COMPLAINT
RESPONDENT.	)	

I, Kay Williams, being first duly sworn upon my oath, do hereby state that I am executive director of the Campaign Finance Disclosure Commission and that Iowans for Tax Relief, Don Carver, treasurer, did violate sections 56.5 and 56.6, Code of Iowa 1979, and that said violations occurred on or about the 24th day of July, 1980, and following.

The facts which are the basis for this Complaint are recited in the Affidavit which has been filed herewith.

_____

(Signature)

STATE OF IOWA)
) ss.
COUNTY OF POLK)

I, Kay Williams, being first duly sworn on my oath, depose and state that I am the Complainant making the foregoing Complaint; that I have read the same and know the contents thereof; and that the statements and allegations therein made and contained are true and correct as I verily believe.

_____
(Signature)

Subscribed and sworn to before me this 4th day of November, 1980.

_____
Notary Public

AFFIDAVIT IN SUPPORT OF COMPLAINT

STATE OF IOWA)
) ss.
COUNTY OF POLK)

I, Kay Williams, having been duly sworn, do depose and state the following:

THAT, I am the executive director of the Campaign Finance Disclosure Commission as set forth in the Complaint filed herein, and that the following facts are those on which I principally rely to sustain the allegations of the Complaint herein.

THAT, Iowans for Tax Relief is a non-profit corporation registered with the Iowa Secretary of State's Office under the provisions of Chapter 504A, that said registration occurred on July 28, 1978 and is in good standing, and that the registered office address of the corporation is shown as First National Bank Building, 300 East Second Street, Muscatine, Iowa.

THAT, Don Carver is listed with the Secretary of State's Office as treasurer of Iowans for Tax Relief and that David M. Stanley is listed as president and registered agent for the corporation.

THAT, on October 30, 1980, a financial disclosure report was filed with the Campaign Finance Disclosure Commission by Yes for Less Taxes, a ballot issue committee supporting an affirmative vote for a call for a constitutional convention.

THAT, a review of the Yes for Less Taxes report disclosed a number of contributions from Iowans for Tax Relief as shown in Exhibit A (attached), constituting $216,530.00, of $226,517.37 total contributions received by Yes for Less Taxes.

THAT, the mailing address for Yes for Less Taxes is shown on its statement of organization as 514 East Second Street, Muscatine, Iowa, and that the mailing address for Iowans for Tax Relief is also 514 East Second Street, Muscatine, Iowa, as evidenced by mail addressed to and acknowledged by Mr. Edward Failor, Executive Director of Iowans for Tax Relief.

THAT, the treasurer of Yes for Less Taxes is listed on the Campaign Finance Disclosure Commission statement of organization as Don Carver, and that Don Carver is also treasurer of Iowans for Tax Relief as previously stated.

THAT, Iowans for Tax Relief and Yes for Less Taxes appear to have commonality of officers, staff, office space and goals relating to support of the ballot issue calling for a constitutional convention.

THAT, Yes for Less Taxes and Iowans for Tax Relief are one and the same organization.

THAT, Iowans for Tax Relief is a political committee required to comply with provisions of Chapter 56.

THAT, the provisions of sections 56.2, 56.5 and 56.6 require disclosure filings by political committees.

THAT, contributions were made by Iowans for Tax Relief to Yes for Less Taxes in an attempt to circumvent the provisions of Chapter 56.

THAT, compliance was requested of Iowans for Tax Relief by oral and written communications on October 31 and November 3, 1980, and that such compliance was refused by Iowans for Tax Relief.

THAT, the Iowans for Tax Relief has not filed a Statement of Organization or October 30, 1980 disclosure report with the Campaign Finance Disclosure Commission as of November 4, 1980.

_____

(Signature)

STATE OF IOWA)
) ss.
COUNTY OF POLK)

I, Kay Williams, being first duly sworn on oath, depose and state that I am the Complainant in the foregoing Affidavit; that I have read the same and know the contents therein made and contained are true and correct as I verily believe.

_____
(Signature)

Subscribed and sworn to before me this 4th day of November, 1980.

_____
Notary Public

Contributions from Iowans for Tax Relief
to
Yes for Less Taxes Committee

Date		Amount
July 24		$ 200.00
July 30		7,500.00
August 11		3,500.00
September 9		7,100.00
September 12		4,600.00
September 24		19,300.00
October 9		32,000.00
October 10		34,000.00
October 14		48,000.00
October 15		27,500.00
October 20		32,830.00
	Total	$216,530.00

Hearing Officer's Findings of Fact and Conclusions of Law filed with Campaign Finance Disclosure Commission, March 5, 1981.

BEFORE THE CAMPAIGN FINANCE DISCLOSURE COMMISSION OF THE STATE OF IOWA

Campaign Finance Disclosure Commission,	)	
COMPLAINANT,	)	NO. 73
vs.	)	
Iowans for Tax Relief, Don Carver, Treasurer 514 East Second Box 747 Muscatine, Iowa 57261,	)	
RESPONDENT.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled matter came on for hearing at 10:00 o'clock A.M., December 16, 1980, at the Commission Office in Des Moines, Iowa, before Herbert S. Selby, Hearing Officer, and Dr. Elwin D. Farwell, Chairman of the Campaign Finance Disclosure Commission.

The Complainant, Campaign Finance Disclosure Commission, was represented by Howard Hagen, Assistant Attorney General, and Alice Hyde, Assistant Attorney General. The Respondent, Iowans for Tax Relief, Don Carver, Treasurer, was represented by Tom Riley and Peter Riley, attorneys at law, of Cedar Rapids, Iowa. The cause proceeded to hearing and the matter was submitted at 6:25 o'clock P.M. on the same date.

After full consideration of all of the testimony given, all exhibits and evidence offered and the statements and arguments of counsel, the Hearing Officer makes the following

FINDINGS OF FACT.

Iowans for Tax Relief is a political organization incorporated in July of 1978, to promote stated political objectives as set forth in Article 3 of its Articles of Incorporation, including among some twelve stated objectives dealing with taxation and tax policies, the objective to "amend the Iowa Constitution to limit income taxes and property taxes, and to limit total state and local government spending."

As originally incorporated, Iowans for Tax Relief specifically and by carefully stated limitation in its Articles of Incorporation, excluded itself from both federal and Iowa campaign finance disclosure laws, Section 8.05 of its original Articles of Incorporation filed in the office of the Secretary of State of Iowa on July 28, 1978, reading as follows:

> "Section 8.05. Non-partisan and Non-political. The Corporation shall be nonpartisan and shall not endorse or support any political party or any candidate for public office. It shall not directly or indirectly participate or intervene in political campaigns on behalf of or in opposition to any candidate for public office. It shall not be a political committee within the meaning of federal or Iowa campaign finance disclosure laws, and shall not be a political organization within the meaning of Section 527 of the Internal Revenue Code. It shall not accept contributions, make expenditures, or incur indebtedness for the purpose of supporting or opposing a candidate for public office *or a ballot issue*."
> (Emphasis Added.)

Funds were solicited by Iowans for Tax Relief from individuals and from other organizations with approximately $26,000.00 being raised in 1978, $100,000.00 in 1979, and $400,000.00 in 1980, and contributors were assured by Iowans for Tax Relief that their contributions would not be disclosed pursuant to Chapter 56 of the Code of Iowa, the Iowa Campaign Finance Disclosure Act, or any other disclosure laws or requirements.

However, on May 27, 1980, the Board of Directors of Iowans for Tax Relief met at the Iowa Farm Bureau Building, West Des Moines, Iowa, with their President, David M. Stanley, presiding, and fourteen of the fifteen Directors present, and in the course of that meeting

"The Board extensively discussed the question of calling an Iowa Constitutional Convention. It was noted that this question is automatically placed on the Iowa general election ballot every ten years, as required by the Iowa Constitution, and that the next vote on this question will be on November 4, 1980.

It was noted that Iowans for Tax Relief has not yet taken a position on any issue to be decided by the voters, and that taking a stand on any ballot issue would be a significant policy change which should be considered carefully. It was pointed out that the Board had previously declined to make any recommendation on whether Iowa should have a Constitutional Convention.

Several Directors pointed out that Iowans for Tax Relief was organized and has operated to date under the policy that we could not accept contributions or make expenditures for the purpose of supporting or opposing any ballot issue committee. This policy was based on the belief that all corporations (profit or non-profit) were prohibited from engaging in any of these activities by Iowa Code Section 56.29. Section 8.05 of our Articles of Incorporation prohibits Iowans for Tax Relief from being a political committee within the meaning of federal or Iowa campaign finance disclosure laws, and prohibits accepting contributions, making expenditures, or incurring indebtedness for the purpose of supporting or opposing a ballot issue." (Quoting from the Minutes of that Meeting).

Still further,

"After discussion, the Board by unanimous vote adopted this public policy position:

We support calling an Iowa Constitutional Convention, and we recommend a 'yes' vote on this question in the election on November 4, 1980, for the purpose of proposing a Constitutional Amendment or Amendments to limit state and local government spending and taxes. We believe that the Convention should be limited to this one purpose.

In recommending a vote to call a Convention, our purposes are (1) to amend the Iowa Constitution to limit state and local government spending and taxes, and (2) to build support for amending the U.S. Constitution to limit federal spending and taxes and require a balanced federal budget. An Iowa Constitutional Convention is not a purpose or goal of Iowans for Tax Relief, and is merely a procedural step toward achieving some of our purposes as stated above.

The Board reviewed Section 8.05 of the Articles of Incorporation. It was noted that the provision prohibiting activities supporting or opposing a ballot issue was included in the Articles, and has been consistently complied with, in the belief that Iowa Code Section 56.29 prohibited all corporations from making expenditures or contributions for a ballot issue. Because the U.S. Supreme Court's *Bellotti* decision, as interpreted by the Iowa Attorney General, renders Section 56.29 unconstitutional, a corporation may now exercise its right of free speech by making expenditures or contributions for a ballot issue. It would be impossible to exercise a corporation's right of free speech without making significant expenditures or contributions. The Directors unanimously agreed that the Articles should be amended to delete the words "or a ballot issue", so that Iowans for Tax Relief may exercise the same right of free speech which is now available to all other corporations.

After discussion, the Directors unanimously agreed that the provision of Section 8.05 prohibiting Iowans

for Tax Relief from being a political committee within the meaning of federal or Iowa campaign finance disclosure laws, is both necessary and consistent with our purposes. It was noted that the Iowa statute and rulings of the Iowa Campaign Finance Disclosure Commission indicate that a corporation organized for other purposes, which wishes to support a ballot issue campaign, should do so by contributing money and gifts in kind to a ballot issue committee registered under the Iowa law. It was unanimously agreed that Iowans for Tax Relief must comply fully with the Iowa law and must avoid doing anything which would cause Iowans for Tax Relief to become a political committee under the Iowa law.

After discussion, the following resolution was adopted by unanimous vote of the 14 Directors present:

> RESOLVED, that Section 8.05 of the Articles of Incorporation is amended to read as follows:
>
> "**Section 8.05. Nonpartisan and Nonpolitical.** The corporation shall be nonpartisan and shall not endorse or support any political party or any candidate for public office. It shall not directly or indirectly participate or intervene in political campaigns on behalf of or in opposition to any candidate for public office. It shall not be a political committee within the meaning of federal or Iowa campaign finance disclosure laws, and shall not be a political organization within the meaning of Section 527 of the Internal Revenue Code. It shall not accept contributions, make expenditures, or incur indebtedness for the purpose of supporting or opposing a candidate for public office." "

The stated amendment, removing the original prohibition against accepting contributions, making expenditures, or incurring indebtedness for the purpose of supporting or opposing a ballot issue by deleting the words "or a ballot issue"

from Section 8.05 of the Articles of Incorporation of Iowans for Tax Relief was filed in the office of the Secretary of State of the State of Iowa on June 5, 1980.

In that same Board Meeting action was taken to create a ballot issue committee through which Iowans for Tax Relief could conduct a campaign in support of calling an Iowa Constitutional Convention and securing a "yes" vote on this question in the election on November 4, 1980, specifically contemplating Chapter 56 of the Iowa Code and the Iowa Campaign Finance Disclosure Law. This committee denominated itself "Yes For Less Taxes" and, as disclosed by reports filed with the Iowa Campaign Finance Disclosure Commission, $216,530.00 in funds of Iowans for Tax Relief was thereafter utilized in the ballot issue campaign through the Yes For Less Committee.

The operations of the Yes For Less Committee were, in fact, carried out by the officers and staff of Iowans for Tax Relief with the Committee having as its office location the office location of Iowans for Tax Relief at 514 East Second Street, Muscatine, Iowa, having as its Treasurer, Don Carver, also the Treasurer of Iowans for Tax Relief, and having as its Co-Chairman two persons selected from the Board of Directors of Iowans for Tax Relief. Further, David Stanley, incorporator, President and Chief Executive Officer of Iowans for Tax Relief served as one of a two-member executive committee for Yes For Less Taxes together with Hilarius Heying, another Iowans for Tax Relief Board member. Stanley's secretary and co-incorporator of Iowans For Tax Relief, Jane Miller, prepared reports and performed similar office work functions for Yes For Less Taxes as she did for Stanley and Iowans for Tax Relief. The Executive Director of Iowans for Tax Relief, Ed Failor, performed staff functions for Yes For Less Taxes, such as working with Olympic Resource Management, the consulting firm hired to lay out the ballot issue campaign advertising and promotional program contracted for by Yes For Less Taxes and paid for with funds transferred from Iowans for Tax Relief to Yes For Less Taxes for that purpose, and, in general, there was substantial commonality and identity as between

Iowans for Tax Relief and Yes For Less Taxes.

Subsequent to the May 27, 1980, Board action of Iowans for Tax Relief, and the June 5, 1980, amendment of its Articles of Incorporation, Iowans for Tax Relief did not and has not filed a Statement of Organization pursuant to Section 56.5 of the Code of Iowa, nor disclosure reports pursuant to Section 56.6 of the Code, has refused requests from the Iowa Campaign Finance Disclosure Commission for such statements and reports, and maintains at this time that it is not subject to the provisions of Chapter 56 or to the disclosure requirements of the Iowa Campaign Finance Disclosure Law.

Proceeding therefrom, this Hearing Officer makes the following

CONCLUSIONS OF LAW.

It is the conclusion of this Hearing Officer that Iowans for Tax Relief, by its actions taken by its Board of Directors on May 27, 1980, for the purpose of actively entering into the ballot issue campaign on the question of calling an Iowa Constitutional Convention in the election on November 4, 1980, by its amendment of its Articles of Incorporation on June 5, 1980, removing the previous prohibition from participating in ballot issue campaigns, and by its subsequent active involvement in the ballot issue campaign dealing with the Constitutional Convention question presented at the November 4, 1980, general election in the State of Iowa, placed itself fully subject to the requirements and provisions of Chapter 56 of the 1979 Code of Iowa. This Hearing Officer is not pursuaded by the effort to exempt Iowans for Tax Relief from the provisions and requirements of Chapter 56 through the device of directing its expenditures of funds and its ballot issue campaign activities through the Yes For Less Committee set up by Iowans for Tax Relief for that purpose, and it is the conclusion of this Hearing Officer that Iowans for Tax Relief cannot and has not removed itself from the requirements of the law by thus acting indirectly instead of directly.

The failure and refusal of Iowans for Tax Relief, Don Carver, Treasurer, to file a Statement of Organization pursuant to Section 56.5 and Disclosure Reports pursuant to Sec-

tion 56.6 of the 1979 Code of Iowa, is, therefore, a willful violation of the provisions of Chapter 56 of the 1979 Code of Iowa and it is the recommendation of this Hearing Officer that this matter be referred to the proper prosecuting authority for prosecution of such willful violation, and such is the recommendation of this Hearing Officer to the Campaign Finance Disclosure Commission.

Herbert S. Selby
Hearing Officer

Order of Executive Director of Campaign Finance Disclosure Commission Referring Complaint for Prosecution filed with Campaign Finance Disclosure Commission, March 5, 1981.

BEFORE THE CAMPAIGN FINANCE DISCLOSURE COMMISSION OF THE STATE OF IOWA

Campaign Finance Disclosure Commission,	)	
COMPLAINANT,	)	NO. 73
v.	)	
Iowans for Tax Relief Don Carver, Treasurer,	)	ORDER
RESPONDENT.	)	

NOW ON THIS 5TH DAY OF MARCH, 1981,

This matter came before the Campaign Finance Disclosure Commission on the Complainant's filing of a Complaint against the Respondent Committee. The Commission has considered the Complaint, the Affidavit in Support of Complaint, and the enclosures in the Respondent Committee's file and finds that the equities are to the Complainant and that the Complainant's Complaint should be referred to the Polk County Attorney and Muscatine County Attorney for prosecution, with said county attorneys to determine venue of the matter.

IT IS THEREFORE ORDERED that the Complainant's Complaint be and it is hereby referred for prosecution.

Kay Williams,
Executive Director
Campaign Finance Disclosure
Commission

Ruling on Appeal by Iowa District Court in and for Muscatine County, filed with the Muscatine County Clerk of Court, October 13, 1981.

IN THE IOWA DISTRICT COURT
FOR MUSCATINE COUNTY

Iowans For Tax Relief and Don Carver,	)	
PETITIONERS,	)	
vs.	)	NO. C2061-381
The Campaign Finance Disclosure Commission, Stephen J. Petersen, and Dan Johnston,	)	RULING ON APPEAL
RESPONDENTS.	)	

The Campaign Finance Disclosure Commission, an Iowa agency established by Chapter 56 of the Code and to be referred to hereafter as "Commission," made a decision affecting Iowans For Tax Relief, Don Carver, Treasurer, to be referred to hereafter as "Iowans" and "Carver" individually and "Petitioners" collectively, which decision was filed on March 5, 1981. As a result of this action, Petitioners have filed their Petition For Judicial Review pursuant to the provisions of Chapter 17A of the Code.

The authority of this Court to review is found in 17A.19(8). That section provides:

> "The court may affirm the agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant any other appropriate relief from the agency action, equitable or legal and including declaratory relief, if substantial rights of the petitioner

have been prejudiced because the agency action is:

a. In violation of constitutional or statutory provisions;

b. In excess of the statutory authority of the agency;

c. In violation of an agency rule;

d. Made upon unlawful procedure;

e. Affected by other error of law;

f. In a contested case, unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole; or

g. Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

The scope of review in a case involving agency action is quite limited. The general rule is that findings of fact by an administrative agency are conclusive upon a reviewing court and not within the scope of its reviewing powers, at least if supported by competent evidence, or if based upon conflicting evidence.

Iowa has adopted the rule that where the evidence is conflicting the finding of the administrative board as to the fact is conclusive upon the court, but where there is no conflict in the evidence, it becomes a question of law. (*Almquist v. Shenandoah Nurseries*, 218 Iowa 724; *Lamb v. City of Boone*, 21 NW 2d 462; *Barz v. Oler*, 257 Iowa 508.)

A court's power to pass on reasonableness of agency action is exercised only to check action which is arbitrary or capricious or which constitutes an abuse of discretion, or is otherwise illegal, and not to determine the wisdom or expediency of the agency action. (2 Am.Jur. 2nd, page 509; *Davenport Water Company v. Iowa State Commerce Commission*, 190 NW 2d 583.)

A court cannot substitute its judgement for that of public service commission's upon a question as to which there is room for a difference of intelligent opinion, and will not set aside an order of a public service commission merely upon the conception of the court as to the wisdom or expediency of that

order. (*Public Service Commission v. Havemeyer*, 296 U.S. 506.)

In its discussion of scope of review in *Davenport Water Company v. Iowa State Commerce Commission*, supra, our Supreme Court said:

> "A presumption of reasonableness attends Commission's determined rate return, and the burden is upon the company (utility) to prove otherwise.
>
> In cases such as this our review is akin to those brought before us involving workmen's compensation controversies.
>
> Looking now to *Merchant v. SMB Stage Lines*, 172 NW 2d 804, this court said:
>
> > 'The commissioner's finding of fact have the effect of a jury verdict and, where the evidence is in dispute or where reasonable minds may differ on inferences fairly to be drawn from the disclosed facts, the commissioner's findings of fact are conclusive on appeal. On the other hand, if there is no dispute in the facts and different inferences could not be fairly drawn from them, a question of law is presented and the court is not bound by the commissioner's findings and conclusions.'
>
> Our duty, then, is to determine whether there is sufficient competent evidence to warrant the decision the commissioner made, not whether there is sufficient evidence to warrant a decision he did not make.
>
> The commissioner, not the court, weighs the evidence, and his findings will be broadly and liberally construed to uphold rather than defeat his decision."

The Commission's duties in connection with a claimed violation of Chapter 56 are set forth in Section 56.11 of the Code. In summary that section provides that upon receipt of a complaint the Commission shall notify the person or party complained of, shall set a hearing in those cases where it believes there is some basis for the complaint, and shall notify the party complained of and have a hearing affording due process

to the accused. In the event the Commission finds reasonable grounds to believe that the accused has engaged in an act or practice which constitutes a violation of Chapter 56, it is required to report that suspected violation of the law to the attorney general or the county attorney, as the case may be, with a recommendation of appropriate action to be taken. The county attorney then has five days within which to commence some action or the county attorney may return the report to the Commission with a recommendation that no prosecution take place or the county attorney may do nothing at all. If the county attorney takes either of the latter two courses, i.e., recommends no prosecution or does nothing within five days, then the Commission may take the report before any judge of the district court who is to determine if sufficient cause exists to warrant action. In the event the judge approves the report, the county attorney is required to immediately commence action or disqualify himself. In the event the county attorney disqualifies himself, the Commission is empowered to retain an attorney to represent it.

Thus we see that the Commission's duty here was to make a determination as to whether or not reasonable grounds exist to believe that Petitioners violated any of the provisions of Chapter 56.

The similarity between the proceedings which are carried on by The Campaign Finance Disclosure Commission and those carried on by a grand jury or a county attorney in this state is striking. A grand jury returns an indictment "when all of the evidence, taken together, is such as in the judgement of the grand jury, if unexplained, would warrant a conviction by the trial jury." (IRCP 4.3.) A county attorney takes a trial information before a district judge who must then make the same determination the grand jury would otherwise make. (IRCP 5.4.) Further proceedings are of a criminal nature. The defendant is entitled to a jury trial, and the burden of proof is upon the State to establish the guilt of the defendant beyond a reasonable doubt.

Under the procedures set forth in Section 56.11 of the Code, the Commission acts as an accusatory agency. In the first

instance it makes a "grand jury type" finding as to whether or not reasonable grounds exist to believe the accused violated Chapter 56. That, however, is not the end of the matter. The Commission must then seek the approval of the county attorney. If the Commission fails to get county attorney's approval, it must then seek the approval of a district court judge. If it fails to get the approval of a district court judge, the matter is at an end.

The end product of the Commission's work is a criminal trial. Section 56.16 provides that any person who willfully violates any provision of Chapter 56 is guilty of a serious misdemeanor. That offense carries a maximum of one year in jail and a $1,000 fine.

While both parties treated this matter as a contested case, we do not believe it fits that definition. A contested case, according to Section 17A.2(2), means a proceeding " ... in which the legal rights, duties or privileges of a party are required by constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing."

As we have noted, the action of the Commission in the instant case is really not a final finding of fact. It is more appropriately a request or recommendation. No legal rights, duties or privileges have been determined.

This is, however, an agency action as is defined in Section 17A.2(9) where agency action is defined as including "the whole or a part of an agency rule or other statement of law or policy, order, decision, license, proceeding, investigation, sanction, relief, or the equivalent or a denial thereof..." An examination of the entire record discloses that the facts in this matter are not really in dispute. What is in dispute is the Commission's view of how those facts should be interpreted. Iowans was organized in July of 1978. At that time it declared its purposes to be the promotion of the general welfare of the people by advocating and supporting certain enumerated goals and purposes which, in summary, can be said to be reduction of taxes at all levels of government. The Commission found Iowans to be a political organization. A common dictionary definition of the word "political" is "of or relating to govern-

ment, a government, or the conduct of government; of, relating to, or concerned with the making as distinguished from the administration of governmental policy." There is no factual dispute that Iowans is a political organization.

In its original Articles of Incorporation, Iowans provided, among other things in Section 8.05, as follows:

> "It shall not accept contributions, make expenditures, or incur indebtedness for the purpose of supporting or opposing a candidate for public office or a ballot issue."

This fact is not in dispute.

Iowans had no dues structure. Its income came from solicited contributions. This fact is not in dispute.

On May 27, 1980, the Board of Directors of Iowans For Tax Relief met and reviewed Section 8.05 of its Articles of Incorporation. Following a discussion of a United States Supreme Court case, *First National Bank of Boston v. Bellotti*, 435 U.S. 765, a 1978 decision, and the interpretation given that case by the Iowa Attorney General, the effect of which was to render Section 56.29 of the Code unconstitutional, the Board of Iowans elected to amend Section 8.05, deleting the phrase "or a ballot issue." This fact is not disputed.

Subsequently, at the same meeting, Iowans adopted a resolution supporting an Iowa constitutional convention and recommending a "yes" vote at the November 4, 1980, election. At this same meeting Iowans also created a committee called "Yes For Less Taxes." Subsequently, Iowans contributed $216,530 of its funds to the "Yes For Less Taxes" committee and also provided in kind services to that committee. The Iowa Farm Bureau federation, several county Farm Bureau organizations, the Iowa Association of Realtors, and the Iowa Manufacturers Association also contributed to the "Yes For Less Taxes" committee. These facts are not disputed.

Iowans For Tax Relief and "Yes For Less" committee shared the same mailing address, had the same treasurer, and shared other officers. The "Yes For Less" committee has fully complied with the provisions of Chapter 56 of the Code. These facts are not in dispute either.

It is a fair summary of this record to state that the facts are not in any material dispute. It is the conclusions to be arrived at from those facts that are in dispute.

As we noted before, where there is no conflict in the facts, the question before the Court is one of law. (*City of Emmetsburg v. Gunn*, 249 Iowa 297.) The question before us in this matter, then, is a question of law; and we are not bound by the findings of the Commission.

In addition to the conclusion that there is no dispute in the facts thereby rendering this matter a question of law, there is the matter of the very nature of the Commission's action itself. The Commission's duty is to make a finding by which it recommends whether or not a criminal prosecution should take place. We believe such a finding can only be treated in the same manner as a grand jury indictment or a county attorney's information. Neither of these instruments constitutes a "finding of fact." They merely constitute the method by which the case is brought to the attention of the court for trial. (See Uniform Jury Instruction 103.) The findings of the grand jury are not evidence, and a criminal defendant is presumed to be innocent until proven guilty at trial. (See Uniform Jury Instruction 104.) The conclusions of the Commission could not be admitted as evidence at any later prosecution, nor could the record of its proceedings be used as evidence in the trial. We conclude, therefore, that the findings of the Commission in this instance do not have the impact of "findings of fact" as that phrase is used in the discussion of scope of review above. As we discussed with counsel during the arguments on this matter, one of the elements the State would have to prove beyond any reasonable doubt in a criminal prosecution under Chapter 56 is that the defendant is a political committee. A definition instruction of that term would be required, and that instruction would have to inform the jury that in order to be a political committee the defendant must consist of persons organized for the purpose of accepting contributions, making expenditures, or incurring indebtedness in the aggregate of more than $100 in any one calendar year for the purpose of supporting a ballot issue. We must also keep in mind

that Section 29 of Chapter 56, which prohibits corporations from contributing to ballot issues, has been declared unconstitutional by the United States Supreme Court and that the Iowa Attorney General has agreed that the section is unconstitutional. It is therefore legal and legitimate for a corporation to take an active part, financially and by in kind assistance, in ballot issues in the State of Iowa.

Even prior to the *Bellotti* decision, public utility corporations were permitted to take part in franchise elections which, of course, are ballot issues. This exclusion was done on a theory that the corporation had a "property interest" in the outcome of such elections. Because of that exception to the ballot issue approbation, the Commission formulated rules governing how utilities should carry out their right to become active in connection with franchise elections. Iowans followed these rules in establishing the "Yes For Less Taxes" committee. This is another undisputed fact.

It is also interesting to note that, during the 1981 regular session of the 69th General Assembly, House File 743 was adopted and has since become the law. That Act amended Chapter 56, deleting the phrase "organized for the purpose of," thereby making Chapter 56 applicable to all permanent organizations in this State. An additional section was added to 56.6 which provides as follows:

> "A permanent organization temporarily engaging in activity which would qualify it as a political committee shall organize a political committee and shall keep the funds relating to that political committee segregated from its operating funds. The political committee shall file reports in accordance with this chapter. When the permanent organization ceases to be involved in the political committee, it shall dissolve the political committee."

This amendment to Chapter 56 was sponsored by the Commission. Apparently it recognized the problems that would grow out of permanent organizations and corporations becoming involved in ballot issues in light of the interpretation they had just given the law in this case. Inasmuch as the statute

now provides for an organization such as Iowans to support or oppose ballot issues by creating a separate committee for that purpose and for the committee to make the reports rather than the parent organization, a procedure almost exactly like that followed by Iowans and the "Yes For Less" committee in this case, we will not again be faced with the questions raised herein.

The Commission based its decision upon the conclusions of the hearings examiner. The hearings examiner found that the "Yes For Less" committee was essentially the child of Iowans and that, because this was so, Iowans was doing indirectly what it was prohibited from doing directly and, therefore, was required to file reports as specified in Chapter 56 and was in violation of that chapter for its failure to file those reports. As we have already said, the relationship between Iowans and the "Yes For Less" committee is not in dispute.

The State argues that while it may not prohibit organizations such as Iowans from engaging in ballot issues it does, nevertheless, have a right to regulate the manner in which such organizations participate. As long ago as 1958, the United States Supreme Court, in *NAACP v. Alabama*, 357 U.S. 449, held that an Alabama statute requiring the NAACP to reveal the names of its members and contributors was an unconstitutional restriction upon the rights of the members of that organization to associate for the advancement of their beliefs and ideas as assured them by the due process clause of the Fourteenth Amendment. In 1976 the Court concluded, in *Buckley v. Valeo*, 424 U.S. 1, that the disclosure approbation of the NAACP-type case was not applicable in the arena of regulation of elections. In doing so the Court cited the compelling public interest of providing information to the voters by revealing the source of a candidate's support, of detering corruption inherent in large political contributions, and in providing a record in order to determine whether campaign contribution limits were being exceeded. As Iowans has pointed out in its Brief and argument, there is no campaign contribution limitation in Chapter 56 and, as the *Bellotti* case noted, the risk of corruption is not present in a ballot issue. The Commission

itself has recognized that permanent organizations should have a method by which they can support or oppose ballot issues which does not involve the organization being required to conform to the reporting requirements of Chapter 56 forever, while at the same time being able to observe and regulate the activities directly involved in the issue at hand.

Chapter 56 as it is applied to the petitioners here is a criminal statute. An underlying principle of criminal law is that all are entitled to be informed as to what the State commands or forbids and no one should be required, at peril of life, liberty, or property, to speculate as the meaning of penal statutes. The standard of certainty required is higher in statutes punishing for offenses than in the case of those depending primarily upon civil sanctions for enforcement. And it is especially high where the offense lies in an area affecting freedom of expression. (See 21 Am.Jur. 2nd, Criminal Law, § 16 and 17.)

There is nothing in this record to indicate that the original formation of Iowans was for any other purpose than those stated in its Articles of Incorporation. The record shows that Iowans has supported or opposed 96 public policy issues, only one of which was a ballot issue. The fact that it was organized to be active in a political arena makes it no more a political committee than other organizations in this State, some of which were active in the ballot issue under observation in this case. Likewise, its amendment of its Articles of Incorporation to allow it to give attention to ballot issues was not a basic change in its purposes and, in fact, a change in purposes was denied of record at the same time. We believe the Commission may have been misled by the fact that Iowans' purpose was to engage in political activity as opposed to engaging in the betterment of its profession as does the Iowa Bar Association, the Iowa Association of Manufacturers, the Iowa State Education Association, the Iowa Medical Association, and the Iowa Farm Bureau Federation, just to mention a few organizations now existing in Iowa.

Nothing in Chapter 56 as it was formed in 1980 in any way prohibited any Iowa corporation or organization from contributing to a political committee. Nowhere in that chapter is there

any prohibition against a corporation or other organization forming a political committee. Nowhere in Chapter 56 is there any prohibition against a corporation or other organization actively participating with or assisting a political committee. The only prohibition is that persons who organize for the purpose of accepting contributions and so forth are, by such organization for such purpose, a political committee and subject to the reporting requirements of the statute. Because of the penal nature of the statute and because the statute adversely effects freedom of expression, a higher standard of clarity is required than would be the case under a civil sanction law.

Therefore, under the record made in this case, Iowans For Tax Relief is not a political committee in the sense that that phrase is used and defined in Chapter 56 of the Code.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the action of the Iowa Campaign Finance Disclosure Commission as set forth in its Order of March 5, 1981, should be and is hereby reversed, and the action against the petitioners is dismissed.

Costs are taxed to The Campaign Finance Disclosure Commission.

Dated this 9th day of October 1981.

Costs $151.50

MAX R. WERLING
Judge of the Seventh Judicial
District of Iowa

Judgment of the Iowa Supreme Court, filed with the Clerk of the Iowa Supreme Court, March 16, 1983.

IN THE SUPREME COURT OF IOWA

Iowans For Tax Relief and Don Carver,	)	Filed March 16, 1983
	)	
APPELLEES,	)	
	)	371
vs.	)	67508
	)	
The Campaign Finance Disclosure Commission, and Dan Johnston,	)	
	)	
APPELLANTS.	)	

Appeal from the Iowa District Court for Muscatine County — Max R. Werling, Judge.

Appeal from district court judgment reversing agency's decision finding suspected violations of the financial disclosure requirements of Iowa Code sections 56.5-.6 (1979). REVERSED.

Thomas J. Miller, Attorney General, Julie F. Pottorff, Assistant Attorney General, and Thomas M. Werner, Assistant Polk County Attorney, for appellants.

Tom Riley and Peter C. Riley of Tom Riley Law Firm, Cedar Rapids, for appellees.

Considered en banc.

McCORMICK, J.

The Campaign Finance Disclosure Commission, respondent agency, conducted a hearing pursuant to section 56.11 of the Iowa Code (1979), as a result of which it found reasonable grounds to believe petitioner Iowans for Tax Relief (IFTR) violated the campaign finance disclosure requirements of Iowa

Code chapter 56. The suspected violation was "referred to the Polk County Attorney and Muscatine County Attorney for prosecution, with [the] county attorneys to determine venue of the matter." Petitioner Iowans For Tax Relief, joined by its treasurer, Don Carver, petitioned for judicial review, naming the commission and the two county attorneys as respondent parties. The district court overruled a special appearance filed by Polk County Attorney Dan Johnston and, upon judicial review, reversed the decision of the commission. Upon the appeal by Johnston and the commission, we reverse the district court.

The appeal essentially presents one procedural question and one question of substantive law. The procedural question is whether Johnston could be made a respondent for purposes of judicial review when he was not a party in the case before the agency. The substantive question is whether, as a matter of law, the disclosure requirements of chapter 56 are inapplicable to IFTR.

I. *The procedural question.* Because Johnston was named as a respondent in the petition for judicial review, the district court's jurisdiction over him depends on whether IFTR had authority to join him in the action as a respondent party.

Judicial review is available to "[a] person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action..." § 17A.19(1). The petition "shall name the agency as respondent..." § 17A.19(4). "Agency" means "each board, commission, department, officer or other administrative office or unit of the state. 'Agency' does not mean the general assembly, the courts, the governor or a political subdivision of the state or its offices and units." § 17A.2(1). The Polk County Attorney's office is an office of a political subdivision. The attorney is plainly not an "agency" within the meaning of the IAPA. *See, generally, Benson v. Fort Dodge Police Pension Board*, 312 N.W.2d 548 (Iowa 1981).

IFTR asserts that authority for joining Johnston is found in section 17A.19(5) which gives the district court power to stay agency action pending the outcome of judicial proceedings.

See Public Employment Relations Board v. Stohr, 279 N.W.2d 286, 290-91 (Iowa 1979). This provision refers to the agency action subject to judicial review. It does not make the county attorney an agency nor does it authorize joining him as a respondent in the judicial review proceeding.

On further review of agency action, the district court sits in an appellate capacity. *See* § 17A.19(8). The proceeding does not give the court any "original authority to declare the rights of parties..." *Stohr*, 279 N.W.2d at 290.

The action against Johnston was predicated on what he allegedly was doing to implement the agency recommendation. It was based on events subsequent to the agency decision that were not part of the record before the agency. This separate action could not be piggybacked onto the petition for judicial review of the agency decision. We have no occasion to determine whether an independent action could have been brought. We simply hold that the judicial review proceeding did not give the district court jurisdiction over the action against Johnston. The district court erred in overruling his special appearance.

II. *The substantive question.* The only question on the merits of the agency decision is whether the commission erred in its legal determination that IFTR was a "political committee" subject to the reporting requirements of chapter 56. IFTR attacked the agency decision on two theories. One was based on statutory construction, and the other was based on the alleged unconstitutionality of the statute on its face and as applied to IFTR. The district court reversed the commission decision on the ground that IFTR did not come within the definition of political committee in section 56.2(6). Thus the court found the agency decision was affected by an error of law within the meaning of the judicial review provisions of section 17A.19(8)(c).

Although the district court found otherwise, we are satisfied that the evidentiary hearing provided for in section 56.11 is a contested case within the meaning of the Iowa Administrative Procedure Act. *See* § 17A.2(1); *Airhart v. Iowa Department of Social Services*, 248 N.W.2d 83, 86 (Iowa 1976). This con-

clusion is not affected by the fact the purpose of the hearing is not to adjudicate whether a violation has occurred but merely whether the commission "finds reasonable grounds to believe" a party has committed a violation. *See* Bonfield, *The Definition of Formal Agency Adjudication Under the Iowa Administrative Procedure Act*, 63 Iowa L. Rev. 285, 296 (1977).

A. *Statutory construction*. The reporting and disclosure requirements of chapter 56 apply only to political committees. "Political committee"

> means a committee, but not a candidate's committee, which shall consist of persons organized for the purpose of accepting contributions, making expenditures, or incurring indebtedness in the aggregate of more than one hundred dollars in any one calendar year for the purpose of supporting or opposing a candidate for public office or ballot issue.

Iowa Code § 56.2(6) (1979).

The facts found by the hearing officer are not challenged. The parties merely differ on whether those facts establish a basis for applying the statute. We will recite the facts relevant to that determination.

IFTR was organized as an Iowa non-profit corporation in 1978. Among twelve objectives relating to tax policy stated in the articles of incorporation was the objective to "amend the Iowa Constitution to limit income taxes and property taxes, and to limit total state and local government spending." In an effort to avoid the applicability of federal and state financial disclosure laws, the articles provided that the corporation would not "accept contributions, make expenditures, or incur indebtedness for the purpose of supporting or opposing a candidate for public office or a ballot issue." In subsequently soliciting funds, IFTR assured contributors that their contributions would not be disclosed.

On May 27, 1980, however, the board of directors of IFTR voted to amend the articles of incorporation to delete the prohibition against receiving and using contributions or incurring debt for supporting or opposing a ballot issue. The United

States Supreme Court had ruled on first amendment grounds in *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978), that corporations could not be barred from contributing to political campaigns. The directors passed a resolution stating in part:

> We support calling an Iowa Constitutional Convention, and we recommend a "yes" vote on this question in the election on November 4, 1980, for the purpose of proposing a Constitutional Amendment or Amendments to limit state and local government spending and taxes.

They asserted that the calling of a constitutional convention "is not a purpose or goal of Iowans for Tax Relief, and is merely a procedural step toward achieving some of [its purposes]." The articles of incorporation were amended on June 5, 1980, in accordance with the board decision.

IFTR established a ballot issue committee called "Yes For Less Taxes" to conduct a campaign for passage of the constitutional convention issue. That committee used IFTR personnel and office space and received 95 percent of its cash contributions from IFTR. Its executive committee consisted of David Stanley, incorporator, president, chief executive officer and director of IFTR, and Hilarius Heying, an IFTR board member.

The "Yes For Less Taxes" committee filed reports pursuant to chapter 56, showing $216,530 received from IFTR was used in the ballot issue campaign. IFTR, however, did not file disclosure reports and, when requested to do so, refused on the ground it was not subject to the statute.

It is obvious that IFTR used the "Yes For Less Taxes" committee as a means for supporting passage of a ballot issue in the belief it could disassociate itself from the statutory responsibility to disclose the source of funds given to the committee by IFTR for that purpose. IFTR became a political committee, however, if at that time it consisted "of persons organized for the purposes of accepting contributions, making expenditures, or incurring indebtedness in the aggregate of more than one hundred dollars in any one calendar year for the

purpose of supporting...a...ballot issue." *See* § 56.2(6).

In arguing the statute was inapplicable, IFTR asserts (1) chapter 56 and its definition of political committee must be construed strictly against the commission, (2) the word "organized" in the political committee definition means "originally organized," (3) IFTR was not organized for ballot issue activity, (4) a commission rule shows IFTR did not become a political committee, (5) a permanent organization engaging in temporary ballot issue activity could not comply with the statute, (6) a commission explanation accompanying a proposed 1981 statutory change constitutes an admission by the commission that chapter 56 did not apply to IFTR, and (7) the 1981 amendments cannot be applied retroactively.

1. *The rule of strict construction.* Section 56.16 provides that any person who willfully violates the provisions of chapter 56 is guilty of a serious misdemeanor. The present action is not a criminal prosecution. It merely involves an administrative determination of reasonable cause for believing a violation has occurred. This determination serves as a predicate for referring the matter to a prosecutor for possible prosecution. *See* § 56.11(3) and (4). Assuming, without deciding, that this is sufficient to make the statute penal in nature, the rule of strict construction of penal statutes is nevertheless subordinate to the rule requiring a court to give a statute a reasonable construction, having in mind "the object to be accomplished, the evils and mischief sought to be remedied, or the purpose to be subserved..." *State v. Newman*, 313 N.W.2d 484, 486 (Iowa 1981). The rule of strict construction comes into play only in doubtful cases. *Id.*

2. *Legislative intent.* Ambiguity is not introduced into the definition of political committee merely by suggesting that the word "organized" should be read as if it said "originally organized." In the light of the spirit and purpose of the disclosure requirements, it is not reasonable to believe the legislature intended to limit the time for ascertaining a duty to disclose to the time the committee was formed. If this were the meaning, any group could circumvent the statute by organizing initially for a non-covered purpose and reorganizing later

for a covered purpose. The obvious overriding objective of chapter 56 in requiring disclosure of ballot issue contributors is enable the public to consider "the source and credibility of the advocate" in evaluating the ballot issue. *See First National Bank of Boston v. Bellotti*, 435 U.S. at 792-93, 98 S. Ct. at 1424, 55 L. Ed. 2d at 728. Sunshine has an antiseptic quality. *Id.* n.32 ("Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected.")

When IFTR amended its articles, resolved to support a ballot issue, established the "Yes For Less Taxes" committee as a means of implementing that objective, and undertook to receive contributions for use in supporting the ballot issue, it at that point plainly consisted "of persons organized for the purpose of accepting contributions, making expenditures, or incurring indebtedness in the aggregate of more than one hundred dollars in any one calendar year for the purpose of supporting...a...ballot issue." The legislature could not reasonably have intended that the applicability of chapter 56 was to be determined for all time by the committee's original purpose. Common sense and plain logic dictate that the nature of the organization at the time of the covered activity is controlling.

3. *The effect of additional non-covered purposes.* IFTR contends that, even if that is true, it did not operate as a ballot issue committee or as a conduit for a ballot issue committee. In support of this contention it points out that it took stands on many other issues and received and used contributions for other purposes as well. It characterizes its ballot issue advocacy as "secondary." Section 56.2(6), however, does not make the distinction urged by IFTR. The statute does not require that the covered purpose be the committee's only purpose or even the primary purpose.

4. *The "commission rule."* The "commission rule" alleged by IFTR to excuse its noncompliance with the statute is merely an interpretative memorandum issued by the commission to provide guidance to utility companies in utility franchise elections. The issue of disclosing contributions was not

involved in those guidelines because the money transferred by the utility to its franchise committee came from its revenues. Utility revenues, and their source, are of course a matter of public record. Any other contributions, under the guidelines, were to go directly to the committee and be reported by it. These guidelines do not support the construction of the statute urged by IFTR. Moreover, it does not appear IFTR ever asked the commission either formally or informally for any advice or opinion concerning applicability of the statute.

5. *Possibility of compliance.* IFTR asserts that chapter 56 could not have been intended to apply to it because compliance with the filing requirements would be impossible for a permanent organization engaged temporarily in supporting a ballot issue. The commission, however, interprets the statute as requiring the statement of organization to be filed pursuant to section 56.5 within ten days of the commencement of an entity's function as a political committee. This interpretation is consistent with the definition of political committee in section 56.2(6). That definition requires both the existence of an organization able to perform the function and a purpose to carry out the function. In the present situation, the committee alleged the filing duty thus arose on or about July 24, 1980. The commission requested and gave IFTR the opportunity to make the filing on at least two subsequent occasions, but IFTR refused the request. Impossibility of compliance has not been demonstrated.

Moreover, disclosure reports are required only during the period the committee is receiving contributions and making disbursements for the covered purpose. *See* § 56.6(2). In this situation, the commission alleged only that a report due October 30, 1980, was not filed. Even when a political committee is not dissolved, a report for a period when contributions have not been received need show only the amount on hand at the beginning of the reporting period. § 56.6(4). It seems reasonable under these provisions that IFTR could terminate its status as a political committee altogether by eliminating the purpose of supporting a ballot issue. In any event, the statute is not impossible to apply to a permanent organization function-

ing temporarily as a political committee. Rather it seems clear the legislature intended the statute to apply to all organizations operating as political committees so long as they are doing so, whether on a permanent or temporary basis.

The difficulty asserted by IFTR is largely self-inflicted. It is reasonable to believe that a permanent organization with multiple purposes that wishes to engage on a temporary basis in a covered activity will create a temporary committee for that purpose. The temporary committee would be divorced from the permanent organization in receiving contributions, making expenditures, and incurring indebtedness. In the present case, however, IFTR sought to retain one of the attributes of a temporary committee, the function of receiving contributions for the covered purpose. The result is not affected by the fact that a portion of the contributions was used by IFTR for non-covered purposes. IFTR solicited and received contributions for the covered purpose and funneled substantial amounts from those contributions to its temporary committee. It operated as a political committee because it received funds for a covered purpose.

6. *The 1981 amendments.* IFTR contends the commission's endorsement of 1981 statutory amendments constitutes an admission that the former statute, relevant here, did not apply to IFTR. Section 56.2(6) was amended as follows:

> 6. "Political committee" means a committee, but not a candidate's committee, which ~~shall consist of persons organized for the purpose of accepting~~ accepts contributions, ~~making~~ makes expenditures, or ~~incurring~~ incurs indebtedness in the aggregate of more than ~~one~~ two hundred fifty dollars in any one calendar year for the purpose of supporting or opposing a candidate for public office or ballot issue.

1981 Iowa Acts ch. 35, § 1. Section 56.6 was amended to add the following provision:

> A permanent organization temporarily engaging in activity which would qualify it as a political committee shall organize a political committee and shall keep the funds relating to that political activity segregated from its operating funds. The political committee shall file reports in accordance with this chapter. When the per-

manent organization ceases to be involved in the political activity, it shall dissolve the political committee.

1981 Iowa Acts ch. 35, § 6.

IFTR argues that it would not have been a political committee even under the amended definition. The commission responds, however, that a permanent organization will still be a political committee if it acts as a conduit for contributions to the political committee. We agree with the commission for the same reasons we find IFTR to be a political committee under the former definition.

As a separate, alternative argument IFTR urges that a commission explanation of the relevant portion of the amendment to section 56.2(6) shows it changed rather than clarified existing law. The alleged explanation appears for the first time in the briefs of the parties. It is not part of the record, and we refuse to consider it. We do not intimate that we would agree with IFTR's interpretation if we were to consider it. Instead, we hold that, apart from the change in dollar amount, the amendment meets the standard for clarifying amendments delineated in *Barnett v. Durant Community School District*, 249 N.W.2d 626, 629 (Iowa 1977).

7. *Retroactivity.* Finally IFTR alleges the commission is attempting to apply the 1981 amendments to it retroactively. This argument assumes that the amendments changed rather than clarified the statute. Because we reject the assumption, we find no merit in the argument.

We conclude the commission did not err in holding that IFTR was a political committee during the period of its ballot issue activity. The district court erred in reversing the commission on this ground.

B. *The constitutional issue.* The district court did not reach the IFTR's constitutional challenge to chapter 56. That challenge is based on IFTR's rights of free speech and association under the first amendment of the United States Constitution and article I, section 7, of the Iowa Constitution.

General principles governing a Federal Constitutional challenge to political campaign contribution disclosure requirements are delineated in *Buckley v. Valeo*, 424 U.S. 1, 65-69, 96

S. Ct. 612, 656-58, 46 L. Ed. 2d 659, 713-16 (1976). Compelled disclosure can seriously infringe on privacy of association and belief guaranteed by the first amendment. It cannot be justified merely by showing some legitimate governmental interest. There must be a relevant correlation or substantial relation between the governmental interest and the information required to be disclosed. Members and contributors are subject to the same protections. Disclosure of contributions to candidate campaigns serves governmental interests of sufficient magnitude to survive first amendment scrutiny. First, disclosure informs the electorate of the source of a candidate's support, thereby assisting voters in evaluating the candidate. Second, it deters actual corruption and avoids the appearance of corruption by exposing large contributions to the light of publicity. Third, it provides a means of gathering data concerning other contribution limitations. *Id.*

Although the risk of candidate corruption is not involved in ballot issue campaigns, the interests of informing the electorate of the source of support or opposition to an issue and providing data for regulating campaign practices are the same. The overriding interest is to enable the public to evaluate the information and arguments of the advocates. *See First National Bank of Boston v. Bellotti*, 435 U.S. 765, 791-92, 98 S. Ct. 1407, 1424, 55 L. Ed. 2d 707, 727-28 (1978). In a related context the Supreme Court has observed that disclosure assists in identifying those seeking to serve their own interests "while masquerading as proponents of the public weal." *United States v. Harriss*, 347 U.S. 612, 625, 74 S. Ct. 808, 816, 98 L. Ed. 989, 1000 (1954). A relevant correlation or substantial relation between a governmental interest and the information required to be disclosed thus exists even when only a ballot issue is involved.

IFTR seeks to equate the situation of its members and contributors with the situation of the members of the NAACP in *NAACP v. Alabama*, 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958). The problem with this, however, is that the organization in that case made an uncontroverted showing that on past occasions revelation of the identity of members had

resulted in various forms of reprisal. The *NAACP* case was distinguished on that ground in *Buckley v. Valeo*, 424 U.S. at 70-71, 96 S. Ct. at 658-59, 46 L. Ed. 2d at 716-17. The decision in *Brown v. Socialist Workers '74 Campaign Committee*, ____ U.S. ____, 103 S. Ct. 416, 74 L. Ed. 2d 250 (1982) is distinguishable for the same reasons. As in *Buckley*, the record in the present case contains no evidence of harassment or any substantial basis for believing it would occur. *See ACLU of New Jersey v. New Jersey Election Law Enforcement Commission*, 509 F. Supp. 1123, 1134-35 (D.N.J. 1981).

We conclude that the disclosure requirements of chapter 56 meet the applicable first amendment standard. We believe the standard is the same under article I, section 7, of the Iowa Constitution. *Cf. Des Moines Register & Tribune Co. v. Osmundson*, 248 N.W.2d 493, 498 (Iowa 1976) (same conclusion under freedom of the press guarantees). We find no merit in IFTR's constitutional challenge to chapter 56.

The commission has not challenged the standing of Don Carver to petition for judicial review. The record shows he was not a party in the contested case before the agency. *See* § 17A.19(1); *Public Employment Relations Board v. Stohr*, 279 N.W.2d 286, 291 (Iowa 1979). Because the issue has not been raised and is not material to our decision of the appeal, we do not address it.

We hold that the district court erred in reversing the commission decision.

REVERSED.

All Justices concur except Carter, J., who concurs in part and dissents in part, and Harris and Larson, JJ., and LeGrand, Senior Judge, who join the dissent.

CARTER, J. (concurring in part and dissenting in part).

I agree that no issue concerning Dan Johnston or the grand jury could properly be brought before the district court on the review of agency action. I therefore concur in that portion of the majority opinion. I do not agree, however, that there is substantial evidence in the record considered as a whole to sustain a finding that IFTR was at any time a "political committee" as that term was defined in Iowa Code section 56.2(6)

(1979). I therefore dissent from the portion of the majority opinion which concludes that it was.

The latter issue is not, as the majority suggests, simply one of statutory interpretation. Also involved are troublesome questions of proof before the agency coupled with a complete lack of fact finding by the agency on essential elements of the case. The definition of "political committee" in effect during the times involved in the present case is not simply functional as the majority concludes. In using the words "organized for the purpose of" the legislature also established a motivational factor as an essential element of the definition. Accepting the majority's conclusion that those words do not mean "originally organized for the purpose of," it still is necessary to establish motive at *some* point in time.

Because it appears without dispute that IFTR was not originally organized for purposes of accepting contributions or making expenditures to support a ballot issue, it is necessary for the commission to show that at some later time this became the purpose for which the individual members of IFTR were associated together in group action. I submit that there is a complete lack of substantial evidence in the record to sustain such a finding. The record shows that prior to, during, and after the ballot issue, which is the subject of the present controversy, the members of IFTR were associated together for reasons other than promoting that issue. It was a nonprofit organization which after the *Bellotti* decision had a constitutional right to expend its funds in support of a ballot issue. Whether the funds would be so expended was a corporate policy decision to be made in accordance with the established decisional processes of the organization.

The result achieved by the majority opinion equates — persons organized for the purpose of accepting contributions and making expenditures for designated political activity — with — persons organized for purposes other than accepting such contributions and expenditures but who do in fact engage in such activity incidental to the reason for their affiliation. If the proper elements are established, the statutory definition of political committee can be satisfied in regard to activity relat-

ing to expenditures or activity relating to accepting contributions. The definition does not require activity relating to both. For this reason, the practical effect of the majority's purely functional approach to the definition is to make any permanent organization, which in fact expends funds for any political activities designated in section 56.2(6), a political committee. This ignores completely that portion of the statutory definition of political committee which requires that the purpose for the organization of the individuals constituting the committee be to carry on the designated political activities.

The 1981 amendments to section 56.2(6) adopt the purely functional approach in defining "political committee" that the commission seeks to invoke in the present case. For purposes of this case, however, IFTR's obligations must be determined under the former statute which contained an entirely different definition of "political committee." In addition, the 1981 amendments adopted what is now Iowa Code section 56.6(6) (1981), which requires that a permanent organization temporarily engaging in those functions which qualify it as a political committee under the new definition, must organize a separate political committee and segregate all funds relating to political activity from its operating funds. It is only the segregated funds which must be reported as political contributions. I submit that because no duty of segregation was imposed by the prior law, all funds of a nonprofit corporation could be considered as its operating funds unless they were specifically earmarked for one of the prescribed political purposes at the time of receipt. No funds received by IFTR during the period the commission claims it should have been reporting under the campaign disclosure act were earmarked for use in promoting the ballot issue. It appears that the decision on how to use these funds was not made until after they were received and that this was accomplished through the ordinary decisional processes of the corporation.

The commission, in deciding the case adversely to IFTR, acted almost exclusively on the premise that the "Yes For Less Taxes" committee was the alter ego of IFTR. While this may be true, it really has no impact on what the obligations of

IFTR are under the campaign disclosure law. That question turns entirely on whether IFTR itself was a political committee as defined in the act. The decision of the commission does not even discuss the statutory definition of political committee or make any findings of fact which bear on the elements of the statutory definition. I would hold that if the proper elements of the statutory definition are laid beside the record made before the commission, there is a lack of substantial evidence to support a finding that IFTR was a political committee. I would affirm the portion of the trial court's decision which held that it was not.

Because the majority rejected this approach, I believe another issue is thereby presented. In addition to finding that IFTR was guilty of a violation of the campaign disclosure act, the commission also recommended criminal prosecution based on its finding that a willful violation was involved. The district court avoided dealing with the issue of whether there had been a willful violation by holding there had been no violation at all. IFTR in paragraph 12(c) of its petition for judicial review specifically challenges the commission's finding of a willful violation on the ground such finding is not supported by substantial evidence. In light of the evidence in the record that IFTR was acting in reliance on the opinion of the Attorney General (Op. Att'y Gen. 706 (1978)), which held that the reporting requirements of the act did not apply to corporations, an opinion which was not withdrawn or superseded during the period the commission claims reports were due from IFTR under the act, the majority's disposition calls for remand to the district court for separate consideration of those issues relating to whether the violation was willful.

Harris and Larson, JJ., and LeGrand, Senior Judge, join this dissent.

Order of the Iowa Supreme Court denying rehearing, filed with the Clerk of the Iowa Supreme Court, April 18, 1983.

IN THE SUPREME COURT OF IOWA

Iowans For Tax Relief and Don Carver,	)	
APPELLEES,	)	NOs. 67508 and 67694
vs.	)	
The Campaign Finance Disclosure Commission, and Dan Johnston,	)	ORDER
APPELLANTS.	)	

After consideration by the court en banc, Wolle, J., taking no part, appellees' petition for rehearing in the above-captioned case is hereby overruled and denied.

Done this 18th day of April, 1983.

THE SUPREME COURT
OF IOWA

By _____
W.W. Reynoldson,
Chief Justice

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Notice of Appeal to the United States Supreme Court, filed with the Clerk of the Iowa Supreme Court, July 8, 1983.

NOTICE OF APPEAL TO UNITED STATES SUPREME COURT FILED JULY 8, 1983

Iowans For Tax Relief and Don Carver,	)	
PETITIONERS-APPELLEES,	)	NOs. 67508 and 67694
vs.	)	
The Campaign Finance Disclosure Commission and Dan Johnston,	)	NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES
RESPONDENTS-APPELLANTS.	)	

TO: R. K. RICHARDSON, Clerk of the Supreme Court of the State of Iowa, State House, Des Moines, Iowa 50319; THOMAS J. MILLER, Attorney General of the State of Iowa, JULIE F. POTTORFF, Assistant Attorney General, Hoover State Office Building, Des Moines, Iowa 50319, Attorneys for The Campaign Finance Disclosure Commission; THOMAS M. WERNER and DAVID W. HIBBARD, Assistant Polk County Attorneys, Room 372, Polk County Office Building, Second and Court Avenues, Des Moines, IA 50309, Attorneys for Dan Johnston, and FLORENCE HETZLER, Clerk of the Iowa District Court in and for Muscatine County, Muscatine County Courthouse, Muscatine, Iowa 52761

Notice is hereby given that Iowans for Tax Relief and Don Carver hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the

state of Iowa entered March 16, 1983, and the order denying rehearing entered April 18, 1983.

This appeal is taken pursuant to Title 28, United States Code, Section 1257, subparagraph 2.

Dated July 8, 1983.

TOM RILEY
of
Tom Riley Law Firm,
a professional corporation
4040 First Avenue NE
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ATTORNEYS FOR
PETITIONERS-APPELLEES

PROOF OF SERVICE

I, Tom Riley, a member of the bar of this Court, did serve the foregoing Notice of Appeal on all parties to this action by depositing a copy of the foregoing notice in the mail with postage prepaid addressed to Thomas J. Miller, Julie F. Pottorff, Assistant Attorney General, Hoover State Office Building, Des Moines, IA 50319, Attorneys for The Campaign Finance Disclosure Commission, Thomas M. Werner and David W. Hibbard, Assistant Polk County Attorneys, Room 372, Polk County Office Building, Second and Court Avenues, Des Moines, IA 50309, Attorneys for Dan Johnston. I further state that the Notice of Appeal was filed by mailing the original and three copies of said notice to the Clerk of the Iowa Supreme Court with postage prepaid, and by mailing a copy of said notice to the Clerk of the Iowa District Court in and for Muscatine County, the Court possessed of the record in the case with postage prepaid, and that I mailed an information copy of said notice to the Clerk of the United States Supreme Court with postage prepaid.

_____

TOM RILEY

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article I, Section 9, Clause 3, Constitution of the United States

No Bill of Attainder or expost facto Law shall be passed.

Amendment 1, Constitution of the United States

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article I, Section 7, Constitution of the State of Iowa (1857)

Liberty of speech and press. Sec. 7. Every person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech, or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury, and if it appears to the jury that the matter charged as libellous was true, and was published with good motives and for justifiable ends, the party shall be acquitted.

Article I, Section 21, Constitution of the State of Iowa (1857)

Attainder — ex post facto law — obligation of contract. Sec. 21. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

Iowa Administrative Procedure Act, Section 17A.19, The Code of Iowa (1979)

17A.19 Judicial review. Except as expressly provided otherwise by another statute referring to this chapter by name, the judicial review provisions of this chapter shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of such agency action. However, nothing in this chapter shall abridge or deny to any person or party who is aggrieved or adversely affected by any agency action the right to seek relief from such action in the courts.

1. A person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof under this chapter. When agency action is pursuant to rate regulatory powers over public utilities or common carriers and the aggrievement or adverse effect is to the rates or charges of a public utility or common carrier, the agency action shall not be final until all agency remedies have been exhausted and a decision prescribing rates which satisfy the requirements of those provisions of the Code has been rendered. A preliminary, procedural or intermediate agency action is immediately reviewable if all adequate administrative remedies have been exhausted and review of the final agency action would not provide an adequate remedy. If a declaratory ruling has not been rendered within thirty days after the filing of a petition therefor under section 17A.9, or if the agency declines to issue such a declaratory ruling after receipt of a petition therefor, any administrative remedy available under section 17A.9 shall be deemed inadequate or exhausted.

2. Proceedings for judicial review shall be instituted by filing a petition either in Polk county district court or in the district court for the county in which the petitioner resides or has its principal place of business. When a proceeding for judicial review has been commenced, a court may, in the interest of justice, transfer the proceeding to another county where the venue is proper. Within ten days after the filing of a peti-

tion for judicial review file stamped copies of the petition shall be mailed by the petitioner to all parties named in the petition and, if the petition involves review of agency action in a contested case, all parties of record in that case before the agency. Such mailing shall be jurisdictional and shall be addressed to the parties at their last known mailing address. Proof of mailing shall be by affidavit. Any party of record in a contested case before an agency wishing to intervene and participate in the review proceeding thereon must file an appearance within forty-five days from the time the petition is filed.

3. If a party files an application under secton 17A.16, subsection 2, for rehearing with the agency, the petition for judicial review must be filed within thirty days after that application has been denied or deemed denied. If a party does not file an application under section 17A.16, subsection 2, for rehearing, the petition must be filed within thirty days after the issuance of the agency's final decision in that contested case. If an application for rehearing is granted, the petition for review must be filed within thirty days after the issuance of the agency's final decision on rehearing. In cases involving a petition for judicial review of agency action other than the decision in a contested case, the petition may be filed at any time petitioner is aggrieved or adversely affected by that action.

4. The petition for review shall name the agency as respondent and shall contain a concise statement of:

(a) The nature of the agency action which is the subject of the petition.

(b) The particular agency action appealed from.

(c) The facts on which venue is based.

(d) The grounds on which relief is sought.

(e) The relief sought.

5. The filing of the petition for review does not itself stay execution or enforcement of any agency action. Upon application the agency or the reviewing court may, in appropriate cases, order such a stay pending the outcome of the judicial review proceedings.

6. Within thirty days after filing of the petition, or within

further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of any contested case which may be the subject of the petition. By stipulation of all parties to the review proceedings, the record of such a case may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

7. In proceedings for judicial review of agency action a court may hear and consider such evidence as it deems appropriate. In proceedings for judicial review of agency action in a contested case, however, a court shall not itself hear any further evidence with respect to those issued of fact whose determination was entrusted by Constitution or statute to the agency in that contested case proceeding. Before the date set for hearing a petition for judicial review of agency action in a contested case, application may be made to the court for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the contested case proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision in the case by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court and mail copies of the new findings or decisions to all parties.

8. The court may affirm the agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant any other appropriate relief from the agency action, equitable or legal and including declaratory relief, if substantial rights of the petitioner have been prejudiced because the agency action is:

(a) In violation of constitutional or statutory provisions;

(b) In excess of the statutory authority of the agency;

(c) In violation of an agency rule;

(d) Made upon unlawful procedure;
(e) Affected by other error of law;
(f) In a contested case, unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole; or
(g) Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion. [C75, 77, 79,§17A.19]

Referred to in §28A.6, 86.42, 87.26, 96.6, 99A.6, 258A.6, 368.22, 601A.17

Section 56.2(6) and (14), The Code of Iowa (1979)

6. "*Political committee*" means a committee, but not a candidate's committee, which shall consist of persons organized for the purpose of accepting contributions, making expenditures, or incurring indebtedness in the aggregate of more than one hundred dollars in any one calendar year for the purpose of supporting or opposing a candidate for public office or ballot issue.

14. "Committee" includes a political committee and a candidate's committee.

Amendment to Section 56.6, The Code of Iowa (1979) Effective January 1, 1982, Acts, 1981 Regular Session, 69th General Assembly of the State of Iowa, Chapter 35, Section 6

6. "Political committee" means a committee, but not a candidate's committee, which ~~shall consist of persons organized for the purpose of accepting~~ accepts contributions, ~~making~~ makes expenditures, or ~~incurring~~ incurs indebtedness in the aggregate of more than ~~one~~ two hundred fifty dollars in any one calendar year for the purpose of supporting or opposing a candidate for public office or ballot issue.

Section 56.5, The Code of Iowa (1979)

56.5 Organization statement.

1. Every committee, as defined in this chapter, shall file a statement of organization within ten days from the date of its organization.

2. The statement of organization shall include:

(a) The name and mailing address of the committee.

(b) The name, mailing address, and position of the committee officers.

(c) The name, address, office sought, and the party affiliation of all candidates whom the committee is supporting and if the committee is supporting the entire ticket of any party, the name of the party.

(d) The disposition of funds which will be made in the event of dissolution if the committee is not a statutory committee.

(e) Such other information as may be required by this chapter or rules adopted pursuant to this chapter.

(f) A signed statement by the treasurer of the committee which shall be in the following form:

"I am aware that I am required to file disclosure reports if the committee receives contributions, makes expenditures, or incurs indebtedness in excess of one hundred dollars in a calendar year for the purpose of supporting or opposing any candidate for public office or ballot issue."

3. Any change in information previously submitted in a statement of organization or notice in case of dissolution of the committee shall be reported to the commission or commissioner not more than thirty days from the date of the change or dissolution.

4. A list, by office and district, of all candidates who have filed an affadavit of candidacy in the office of the secretary of state shall be prepared by the secretary of state and delivered to the commission not more than ten days after the last day for filing nomination papers. [S13,§1137-al; C24, 27, 31, 35, 39,§973; C46, 50, 54, 58, 62, 66, 71, 73,§56.2; C75, 77, 79,§56.5]

Section 56.6, The Code of Iowa (1979)

56.6 Disclosure reports.

1. Each treasurer of a committee shall file with the commission or commissioner disclosure reports of contributions received and disbursed on forms prescribed by rules as provided by chapter 17A. The reports from all committees, except those committees for municipal and school elective offices, shall be filed on the twenty-fifth day or mailed by certified mail by the twenty-fourth day of January, May, July and October of each year. The January report shall be current to the end of the month preceding the filing. The May, July and October reports shall be current as of five days prior to the filing deadline. The January report shall be the annual report. Committees for municipal and school elective offices and ballot issues shall file reports five days prior to any election in which the name of the candidate or the ballot issue which they support or oppose appears on the printed ballot and thirty days following the final election in a calendar year in which the candidate's name or the ballot issue appears on the ballot. A committee supporting or opposing a candidate for a municipal or school elective office or a ballot issue shall continue to file a disclosure statement every thirty days until it dissolves. These reports shall be current to five days prior to the filing deadline. A state statutory political committee and congressional district committees as authorized by the constitution of the state statutory political committee shall not be subject to the provisions of this subsection if the state statutory political committee files copies of campaign disclosure reports as required by federal law with the commission at such times as the reports are required to be filed under federal law, provided that the federal reports contain all information required by this chapter.

2. If any committee, after having filed a statement of organization or one or more disclosure reports, dissolves or determines that it shall no longer receive contributions or make disbursements, the treasurer of the committee shall notify the commission or the commissioner within thirty days following such dissolution by filing a dissolution report on forms pre-

scribed by the commission. Moneys refunded in accordance with a dissolution statement shall be considered a disbursement or expense but the names of persons receiving refunds need not be released or reported unless the contributors' names were required to be reported when the contribution was received.

3. Each report under this section shall disclose:

(a) The amount of cash on hand at the beginning of the reporting period.

(b) The name and mailing address of each person who has made one or more contributions of money to the committee including the proceeds from any fund-raising events except those reportable under paragraph "f" of this subsection, when the aggregate amount in a calendar year exceeds the amount specified in the following schedule:

(1) For any candidate for school or township office	$ 25
(2) For any candidate for city office	$ 25
(3) For any candidate for county office	$ 25
(4) For any candidate for the general assembly	$ 50
(5) For any candidate for the Congress of the United States	$100
(6) For any candidate for state-wide office	$100
(7) For any state statutory political committee	$100
(8) For any county statutory political committee	$ 50
(9) For any ballot issue	$ 25

(c) The total amount of contributions made to the political committee during the reporting period and not reported under paragraph "b" of this subsection.

(d) The name and mailing address of each person who has made one or more in kind contributions to the committee when the aggregate market value of the in kind contribution in a calendar year exceeds the amount specified in subsection 3, paragraph "b," of this section. In kind contributions shall be designated on a separate schedule from schedules showing contributions of money.

(e) Each loan to any person or committee within the calendar year in an aggregate amount in excess of those amounts enumerated in the schedule in paragraph "b" of this subsection, together with the name and mailing address of the lender and endorsers and the date and amount of such loans. Loans shall be reported on the contributions section of the disclosure statement.

(f) The total amount of proceeds from any fund-raising event. Contributions and sales at fund-raising events which involve the sale of a product acquired at less than market value and sold for an amount of money in excess of the amount specified in paragraph "b" of this subsection shall be designated separately from in kind and monetary contributions and the report shall include the name and address of the donor, a description of the product, the market value of the product, the sales price of the product, and the name and address of the purchaser.

(g) The name and mailing address of each person to whom disbursements or loan repayments have been made by the committee from contributions during the reporting period and the amount and date of each disbursement except that disbursements of less than five dollars may be shown as miscellaneous disbursements so long as the aggregate miscellaneous disbursements to any one period during a calendar year do not exceed one hundred dollars.

(h) The amount and nature of debts and obligations owed in excess of those amounts stated in the schedule in paragraph "b" of this section by the committee. Loans made to a committee and reported under paragraph "b" of this subsection shall not be considered a debt or obligation under this paragraph. A loan made by a committee to any person shall be considered a disbursement.

(i) Such other information as may be required by this chapter or rules adopted pursuant to this chapter.

(j) The aggregate amount received by a candidate or an officeholder in any form of an honorarium in excess of

those amounts enumerated in the schedule in paragraph "b" of this subsection.

4. If no contributions have been accepted nor any disbursements made or indebtedness incurred during that reporting period, the treasurer of the committee shall file a disclosure statement which shows only the amount of cash on hand at the beginning of the reporting period.

5. A committee shall not dissolve until all debts and obligations are paid or transferred and the remaining money in the account is distributed according to the organization statement. [S13,§1137-al,-a3; C24, 27, 31, 35, 39,§972, 973, 975, 976; C46, 50, 54, 58, 62, 66, 71, 73,§56.1, 56.2, 56.4, 56.5; C75, 77, 79,§56.6; 68GA, ch 1015,§5]

Amendment to Section 56.2(6), The Code of Iowa (1979) Effective January 1, 1982, Acts, 1981 Regular Session, 69th General Assembly of the State of Iowa, Chapter 35, Section 1

New Subsection. A permanent organization temporarily engaging in activity which would qualify it as a political committee shall organize a political committee and shall keep the funds relating to that political activity segregated from its operating funds. The political committee shall file reports in accordance with this chapter. When the permanent organization ceases to be involved in the political activity, it shall dissolve the political committee.

Section 56.11, The Code of Iowa (1979)

56.11 Complaints — procedure.

1. Any eligible elector may file a complaint of an alleged violation with the commission. The complaint shall be verified and supported by affidavit detailing the circumstances of the violation alleged. The commission may initiate action on its own motion by filing a complaint accompanied by such an affidavit. Within twenty-four hours after receipt of a com-

plaint or initiation of its own complaint, the commission shall notify the person, candidate or committee against whom the complaint is made of receipt or initiation of the complaint, and until it has done so it shall make no investigation of any kind into the campaign affairs of the person, candidate or committee. Unless the commission concludes that there is no reasonable basis for a complaint which has been filed, it shall set a date for a hearing on the complaint which shall be not more than fifteen days after the date the complaint is received or initiated by the commission. The commission shall serve the person, candidate or committee against whom the complaint is made a copy of the complaint and supporting affidavit and notice of the hearing in the manner provided by the rules of civil procedure. Copies of the complaint, affidavit and notice shall also be sent to each of the other candidates, if any, for the office affected. If a complaint is filed or initiated less than fifteen days before the election at which the office affected is to be filled, the commission shall set the hearing at the earliest possible date so as to allow the issue to be resolved prior to the election. An extension of time for the hearing may be granted when both parties mutually agree on an alternate date for the hearing.

2. The commission shall investigate the complaint and conduct the hearing. Upon request of the commission, the county attorney or the attorney general shall assist the commission in any investigation and report to it as directed. The commission shall have the power to subpoena and review all records of a candidate or committee required to be kept under this chapter. Due process, including the right to be represented by counsel, shall be accorded the accused. The commission shall provide for the confidentiality of the records of a candidate or committee during the investigation and hearing process and shall provide for confidential hearings only if requested by either party to the complaint, except that if the commission itself is a complainant it may not request a confidential hearing. After the hearing the commission shall determine whether or not there are reasonable grounds to believe that a violation of the provisions of this chapter did occur. The commission shall send a

copy of its findings of fact and decision to the person, candidate or committee against which the complaint was filed and to each candidate for the public office affected. The commission may assess the cost of such hearings against either party involved in the hearing.

3. If the commission finds reasonable grounds to believe that the person, candidate, or committee has engaged in an act or practice which constitutes a violation of this chapter, the commission shall report the suspected violation of law to the United States attorney, the attorney general, or the county attorney, as the case may be, with a recommendation of appropriate action to be taken.

4. Upon receipt of the report and recommendations of the commission, the county attorney or attorney general shall review the report and recommendation and within five days of receiving the report institute the recommended actions and any other action for relief, including a permanent or temporary injunction, restraining order or other appropriate remedy in the district court in and for the county in which the accused resides or shall advise the commission that in his judgment the case does not merit prosecution. In the event the county attorney or attorney general does not initiate the recommended action within five days of receipt or if he advises against prosecution of the report, the commission may take the report before any judge of the district court, who shall determine if sufficient cause exists to warrant action. If the judge of the district court finds that the report warrants prosecution, the county attorney or attorney general shall immediately commence the action or disqualify himself. In the event of disqualification, the commission may retain an attorney to represent it and commence the action. The county attorney, attorney general, or United States attorney, may also institute criminal action. [C75, 77, 79,§56.11]

Referred to in §56.10

Recasted Petition for review of agency action, filed with the Clerk of the Muscatine County District Court, June 18, 1981.

IN THE IOWA DISTRICT COURT IN AND FOR MUSCATINE COUNTY

Iowans For Tax Relief and Don Carver,	)	
PETITIONERS AND PLAINTIFFS,	)	
vs.	)	NO. C 2061-381
The Campaign Finance Disclosure Commission, Kay Williams, Elwin D. Farwell, Robert Fulton, Jolene Stevens, Herbert Selby, Emmanuel S. Bikakis, Stephen J. Petersen, and Dan Johnston,	)	RECASTED PETITION FOR REVIEW OF AGENCY ACTION
RESPONDENTS AND DEFENDANTS.	)	

COME NOW the Petitioners-Plaintiffs and, pursuant to Iowa Code Section 17A.19, petition for review of agency action and state as follows:

1. Petitioner-Plaintiff Iowans For Tax Relief ("Iowans") is a nonprofit corporation organized July 28, 1978, under Iowa Code Chapter 504, with its principal office and principal place of business in Muscatine, Muscatine County, Iowa.

2. Petitioner-Plaintiff Don Carver is the treasurer of Iowans and his place of residence is Muscatine County, Iowa.

3. Respondent-Defendant Campaign Finance Disclosure Commission ("Commission") is an administrative agency organized under Iowa Code Chapter 56. Its executive director

is Defendant Kay Williams, a resident of Norwalk, Warren County, Iowa. Its Commissioners are Defendants Elwin D. Farwell, of Decorah, Winneshiek County, Iowa; Robert Fulton, of Waterloo, Black Hawk County, Iowa; Jolene Stevens, of Sioux City, Woodbury County, Iowa; Herbert Selby, of Newton, Jasper County, Iowa; and Emmanuel S. Bikakis, of Sioux City, Woodbury County, Iowa.

4. Respondent-Defendant Stephen J. Petersen is the County Attorney of Muscatine County and his place of residence is Muscatine County, Iowa. Defendant Dan Johnston is the County Attorney of Polk County and his place of residence is Polk County, Iowa.

5. The nature of the agency action subject to review is the Defendant Commission's Complaint filed November 4, 1980, the Commission's Order of March 5, 1981, and all of the findings, conclusions, rulings and orders inhering therein.

6. The particular action grows out of Campaign Finance Disclosure Commission Case No. 73 wherein the Campaign Finance Disclosure Commission is Complainant and Iowans For Tax Relief, Don Carver, treasurer, is Respondent.

7. Venue is based on the residence of Don Carver in Muscatine County, Iowa, and the location of the principal place of business of Iowans in Muscatine County, Iowa, as provided in Iowa Code Sections 17A.19(2) and 56.11(4).

8. Relief is sought on the grounds that substantial rights of Petitioners-Plaintiffs have been prejudiced, because the Respondent Commission's action violates the Constitution of the United States and the Constitution of the State of Iowa because:

(a) Forced disclosure of Iowans' supporters will chill and infringe upon Iowan's right to speak, disseminate information and advocate its beliefs;

(b) Forced disclosure of the identities of Iowans' supporters will chill and infringe the rights of the supporters to associate together to promote their beliefs through Iowans and to exercise their right of free speech by joining and contributing to Iowans;

(c) No valid governmental interest justifies the forced dis-

closure of campaign financing in connection with ballot issues; and

(d) Chapter 56, to the extent it requires nonpartisan organizations of continuous existence to file detailed reports every 30 days following an election until the organization is dissolved, constitutes an unconstitutional burden on associational rights.

9. Relief is sought on the grounds that substantial rights of Petitioners-Plaintiffs have been prejudiced, because the Respondent Commission's action violates Chapter 56 to the extent it:

(a) Refers the alleged violation for prosecution to the Polk County Attorney;

(b) Finds or concludes that Iowans is a political committee within the meaning of Section 56.2(6) of the Iowa Code; and

(c) Finds or concludes that Iowans is subject to the reporting and disclosure requirements of Sections 56.5 and 56.6 of the Iowa Code.

10. Relief is sought on the grounds that substantial rights of Petitioners-Plaintiffs have been prejudiced, because the Respondent Commission's action exceeds its statutory authority for the reasons stated in paragraph 9 above.

11. Relief is sought on the grounds that substantial rights of Petitioners-Plaintiffs have been prejudiced because the Respondent Commission's action violates the Commission's own rules, rulings and guidelines, and specifically the revised January, 1980, Declaratory Rulings and Guideline Answers dealing with organizations of continuous existence.

12. Relief is sought on the grounds that substantial rights of Petitioners-Plaintiffs have been prejudiced, because the Respondent Commission's action is unsupported by substantial evidence to the extent it finds or concludes:

(a) That Iowans is a political committee under Section 56.2(6) of the Iowa Code; and

(b) That Iowans is subject to the reporting and disclosure requirements of Sections 56.5 and 56.6 of the Iowa Code; and

(c) That Iowans or Don Carver willfully violated the reporting and disclosure provisions of Chapter 56 of the Iowa Code.

13. Relief is sought on the grounds that substantial rights of Petitioners-Plaintiffs have been prejudiced, because the Respondent Commission's action is unreasonable, arbitrary, capricious, characterized by an abuse of discretion and a clearly unwarranted exercise of discretion for all of the reasons set forth above.

14. Petitioners-Plaintiffs Iowans and Don Carver seek the following relief:

(a) That the Complaint filed by the Commission on November 4, 1980, be dismissed; and

(b) That the Commission's Order of March 5, 1981, be reversed and held of no force and effect.

15. Pursuant to Section 17A.19(8) of the Iowa Administrative Procedure Act, Iowans seeks declaratory relief declaring the following:

(a) Iowans has a right protected under the United States Constitution and the Iowa Constitution to speak, disseminate information and advocate its beliefs.

(b) The members of Iowans have a right protected by the United States Constitution and the Iowa Constitution to associate together to promote their beliefs through Iowans, and to exercise their right to free speech by joining and contributing to Iowans.

(c) Iowans has standing to assert the constitutional rights of its members.

(d) Forced disclosure of the names and addresses of the contributors to or members of Iowans would chill and infringe constitution rights of speech and association.

(e) The attempt to prosecute Don Carver and take action against Iowans and its contributors and members violates the constitutional rights of Iowans and its members and is prohibited by the United States Constitution and the Iowa Constitution.

(f) Iowa Code Chapter 56, as it relates to ballot issues, violates the United States Constitution and the Iowa

Constitution. Because contributions to successful candidates for public office may influence their actions as public officials, the government has a sufficient interest to require disclosure of contributions to candidates. The government has no comparable interest in requiring disclosure of contributions to organizations supporting or opposing a ballot issue. There is no compelling governmental interest which permits the government to chill and infringe upon constitutional rights by compelling disclosure of contributions to ballot issue committees.

(g) Forcing Iowans or similar organizations of continuous existence to comply with Iowa Code Chapter 56, including but not limited to the disclosure of contributors' names, addresses and amounts contributed, and the filing of detailed reports every 30 days, would be an unconstitutional burden on the rights of the organization and its members, in violation of the United States Constitution and the Iowa Constitution.

(h) No organization is a political committee within the meaning of Iowa Code Chapter 56 unless it is organized for the purpose of accepting contributions, making expenditures, or incurring indebtedness for the purpose of supporting or opposing a candidate for public office or ballot issue.

(i) Iowans was not organized for the purpose of accepting contributions, making expenditures, or incurring indebtedness for the purpose of supporting or opposing a candidate for public office or ballot issue.

(j) Iowa Code Chapter 56 has no application to Iowans.

(k) Iowa Code Section 56.11(4) requires that any action to enforce Chapter 56 must be brought in the county of residence of the accused.

(l) The only county attorney with any authority to bring an action to enforce Chapter 56 is the county attorney of the county of residence of the accused.

(m) The failure of a prosecutor to initiate an action within five days of receipt of the report and recommendation of the Defendant Commission, as required by Iowa Code

Section 56.11(4), prohibits the prosecutor from subsequently bringing an action unless a judge of the district court of the county of residence of the accused determines that sufficient cause exists to warrant action.

(n) The Polk County Attorney has no authority to take any action in this matter.

(o) The Defendant Commission's action against Iowans and Don Carver is improper and should be set aside because the Commission's action was tainted by the conflict of interest of Defendant Fulton and his participation in and vote for the Commission's decision to file the Complaint.

(p) It is unlawful for the Commission to use Iowa Code Chapter 56 as a device to intimidate or discourage Iowans and its members from exercising their rights of free speech in opposition to the state government's taxing and spending policies.

WHEREFORE, Petitioners-Plaintiffs pray that the Complaint filed by the Commission on November 4, 1980, and the Commission's Order of March 5, 1981, be dismissed, reversed and held of no force and effect and that the Court declare the rights of the parties as set forth in paragraph 15(a) through (p) above, and for costs as allowed by law.

TOM RILEY

PETER C. RILEY
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ATTORNEYS FOR
PETITIONERS-PLAINTIFFS

Copy to:

Howard O. Hagen
Thomas Werner
Stephen J. Peterson

Portions of hearing before a Hearing Officer of Campaign Finance Disclosure Commission held December 16, 1980.

Portion of opening statement of counsel for Iowans for Tax Relief.

One of the issues facing the voters in the 1980 general election was whether or not to hold a constitutional convention. The founding fathers wisely provided for voter consideration of this issue every 10 years in perpetuity. Lined up in support of a constitutional convention that would put constitutional restraints on government spending and taxation were groups that have long been associated with Jeffersonian democracy and prudence in government taxation and spending. Among these groups were the Iowa Farm Bureau, the Iowa Manufacturers Association, the Iowa Association of Realtors and my client, Iowans for Tax Relief.

Lined up against the constitutional convention were groups with a definite economic interest in maintaining or increasing the present size of government. Principal among them were labor unions representing state and local governmental employees such as the ISEA, the AFSCME, and so forth. Both supporters and opponents spent money and allocated staff time and made other in-kind contributions in an effort to educate the voters on the merits or the demerits of constitutional convention. Both sides formed a ballot issue committee. The supporters called their "Yes for Less Taxes," and the opponents called theirs "The Committee to Protect the Constitution." None of the organizations that I have mentioned that set up the Committee to Protect the Constitution, that provided funds to that committee, and/or contributions to their ballot issue committee filed under Chapter 56.

Significantly, no complaint by government has been made against any of these organizations. By the same token none of the organizations that helped set up the Yes for Less Taxes Committee that provided funds to that committee and/or contributed substantial in-kind contributions filed under Chapter 56, but one of these groups has been singled out and a com-

plaint filed against it, which is the subject matter of this hearing. The one group that has been singled out for prosecution by an agency of government is a group that just happens to be the natural enemy of government, a group that was formed in 1978 to attack high taxes, government waste and inefficiency at all levels and branches of government, whether it be local, state or federal.

Response of hearing officer to opening statement of counsel for Iowans for Tax Relief.

THE HEARING OFFICER: Before proceeding with the presentation of the case by the Complainant, I think, for the enlightenment of everybody, it should be made clear from the point of view of myself, as Hearing Officer, and the point of view of the Commission, that our primary task is the enforcement of Chapter 56.

We are interested, of course, in the discussions as to the alleged constitutionality or lack of constitutionality of that statute, but for the purposes of these proceedings and for the purposes of carrying out the function of the Campaign Finance Disclosure Commission, it is our view, and the view of the Chair here, that the statute itself is constitutional. Any questions of constitutionality if, indeed, they are there and are to be pursued, I think lie beyond the Commission, and would lie in the courts at an ultimate — at a further stage if, indeed, the matter does proceed further.

Portion of cross examination of Cloyd Robinson.

Further Cross Examination

BY MR. RILEY:

Q How many debates did you engage in, Senator Robinson?

A Many. I debated Senator Rush before the Firefighters Union at the Sheraton Hotel in Cedar Rapids. I debated a representative of the League of Women Voters on Channel 2, Barry Norris, in Cedar Rapids. I debated Mark Schantz of your office at the Wakonda Club in Des Moines. I responded to a KCRG editorial which came out against the constitutional convention, and I might add that I did not ask KCRG or the Gazette if I could respond to that editorial; they, in fact, called me. Aldy Swanson called me and said, "As a spokesman for Yes for Less Taxes Committee, we want to give you an opportunity to respond." I mention that only to show you that I guess they did not call Dave Stanley or Ed Failor; they called Cloyd Robinson.

Q One other question.

A MR. RILEY: Are you in the process of your examination?

MR. HAGEN: Well, if you're continuing—

THE HEARING OFFICER: I'm regarding this as further cross examination. We'll go back for redirect.

Q (By Mr. Riley) One other question to help out on this point of clarification. You mentioned Mr. Mark Schantz. Is he the Solicitor General for the Attorney General's office?

A I understand he is.

Q You mean to say he took part in a debate? What side did he take to this issue?

A He was opposed to the constitutional convention.

Q He was? Do you know, from your knowledge of this subject as an expert witness now, was his boss, Tom Miller,

opposed to the constitutional convention?
A Yes, I believe he spoke to the constitutional convention.
Q Is he one and the same as the employer of this employee who is prosecuting this complaint against us?
A That would be correct.

Portion of direct examination of Don Carver.

Q For the record, would you please state your full name?
A Donald W. Carver.
Q And your address, Mr. Carver?
A Rural Route 4, Box 23, Muscatine, Iowa.

Portion of statement of David M. Stanley.

Iowans for Tax Relief is detested by many politicians, government officials, government employee unions, and special interests that receive tax dollars. Nobody enjoys giving up money or power, and we work to limit their presently unlimited taxing and spending powers.

In addition, many of our specific proposals are vehemently opposed by powerful interests, including the most powerful special interest of all: government itself. For example, consider three of the public policy stands taken by our Board this year (1980). Our support of the Roth-Proxmire Resolution to limit 1981 federal spending to 21% of the U.S. gross national product would have cut back the money for the entire federal government and its programs. Our call for a five percent reduction in the total number of Iowa state government employees was not greeted with enthusiasm by government employee unions. Our present opposition to any state law allowing a new local option tax is in direct conflict with an ardent desire of many local government officials.

Many powerful officials and special interests would like to destroy Iowans for Tax Relief or weaken our efforts. This hearing is a result of one attempt by the State government to use its power against us.

We have more than 6,000 members, in all 99 counties. All contributors automatically become members unless they request otherwise. Our members include Iowans from almost every occupation, including many government employees.

Our members need protection of their right to privacy. Many members, if their names were published, would fear retaliation, revenge, and harassment by government itself and the special interests that want more government spending. For example, if the privacy of our members were lost:

1. A member employed by the federal, state, or local government could reasonably fear harassment and verbal abuse from other government employees and especially from government employee union officials.

2. A member who needs any kind of permit from the federal, state, or local government could reasonably fear that the permit would be delayed, or would receive a hostile review, by a vindictive government official.

3. A member who has a government contract, or sells anything to the federal, state, or local government, could reasonably fear loss of the contract and loss of income.

4. A member who sells insurance to any government employee organization, or to any private organization that benefits from government spending, could reasonably fear loss of this business and loss of income.

5. Since the Governor and Attorney General of Iowa have strongly opposed our efforts, a member serving in any position appointed by the Governor or by the Attorney General could reasonably fear retaliation, either against the individual or against his government agency.

The U.S. Supreme Court has repeatedly struck down state laws that force private organizations to disclose the names of their members, because of the chilling effect on First Amend-

ment rights. The members of Iowans for Tax Relief need and are entitled to the same protection, for the same reasons.

We have a duty to protect our members' Constitutional rights. We shall protect their rights in every way that the Constitution and the laws allow.

Portion of re-direct examination of David M. Stanley.

Q How would the simple filing of the disclosure report of contributors in any way endanger the existence of Iowans for Tax Relief?

A You're prolonging this hearing, because I could tell you chapter and verse.

Q But in a nutshell.

A Well, in a nutshell, many of our members who are teachers, school administrators, working for government at local, state or federal levels say, "Look, I believe in what you're doing. I see waste in my own office where I work, and I want to see a limit put on government, and we'll be more efficient if you do, but leave my name out of it. I will not take the harassment, the verbal abuse, the threats that will come from some of my co-workers and particularly from the officials of the government employee union where I work." I think if you'll go back — That's just one of many. Government is so big today, almost anybody in any kind of business — I'm talking about the local insurance agent, the fellow who sells office supplies, or whatever — he's doing business with government.

Now, he comes out and is identified publicly as giving to an organization that wants to cut back government. Does that help your business, or does that cut back your business? He's trying to make a living. He's got to think of that.

I could give you a dozen more examples, but very frankly we are in the same spot as the member of the

NAACP in Alabama when George Wallace ran through that law that said you've got to file your membership list. You know darn well why he wanted that membership list, and you and I know darn well why the state wants the names of our contributors; to discourage them from any more contributing and to allow all the various quiet forms of retaliation to take place that would help put us out of business.

Purposes clause of Articles of Incorporation of Iowans for Tax Relief.

Article 3.

Section 3.01. Purposes. The Corporation is organized and shall be operated exclusively for the promotion of social welfare within the meaning of Section 501(c) (4) of the Internal Revenue Code and applicable regulations. The purposes for which the Corporation is organized are to advance the common good and general welfare of the people by advocating and supporting these goals and principles, and by informing the public of these goals and principles:

(a) Reduce the percentage of the people's income and property taken by taxes. By cutting the percentage that government takes away, stimulate the economy and individual initiative so that more will be produced for everyone.

(b) Limit taxes and spending to force government to cut waste, increase efficiency, set priorities, and concentrate on providing essential services (such as education and police and fire protection) and helping people who need help. Encourage problem-solving by the private sect: individuals, companies, churches, citizens' organizations, etc.

(c) Change the tax system to encourage work, saving, investment, starting new businesses, creation of jobs, and productivity. Tax laws should encourage the people to own their homes and own property, rather than imposing unreasonable tax burdens. The tax system should be balanced by large but gradual cuts in all tax rates on income and property.

(d) Amend the United States Constitution to require a balanced budget, limit income tax rates, and limit federal spending.

(e) Amend the Iowa Constitution to limit income taxes and property taxes, and to limit total state and local government spending.

(f) Reduce federal income taxes (including taxes on capital gains) for all taxpayers and in all brackets. Federal income taxes should not be increased in any way, directly or indirectly.

(g) Reduce Iowa income taxes for all taxpayers and in all brackets. State income taxes should not be increased in any way, directly or indirectly. No local income tax should be permitted.

(h) Change the income tax system to stop inflation from pushing taxpayers into higher tax brackets.

(i) Put a realistic limit on the percentage increase in the assessed value of any property for any year. Inflation of property values must not be allowed to force Iowans to leave their homes, farms, or businesses.

(j) Prevent any new state law that would raise property taxes or require (directly or indirectly) a property tax increase. When a state law requires local government to perform additional services or incur additional costs, an adequate source of funds other than property tax should be provided.

(k) Eliminate all remaining taxes on personal property. There should be no tax on any kind of personal property.

(l) Unite all property taxpayers and income taxpayers to work for relief from both of these oppressive taxes.

Portion of Campaign Finance Disclosure Commission's Brief before the district court.

The legislative history supports the view that the definition of a "political committee" was amended for the purpose of clarification. The deletion of the phrase "persons organized for the purpose of" was recommended to the legislature by the Commission. The explanation for the proposed amendment was specifically stated:

> This section clarifies the intent of Chapter 56 to include 'in place' organizations in the requirements for disclosure when such organizations engage in political activity. Current law defines the covered committees as only those organized for the purpose of such activity. Therefore, organizations organized originally for purposes other than political activity (such as trade associations, chambers of commerce, professional groups) could expend funds to promote or oppose candidates or ballot issues and circumvent the disclosure intended by Chapter 56 in the public interest.

This explanation for the amendment expressly provides that the phrase should be deleted "to clarify the intent" of chapter 56.

Campaign Finance Disclosure Commission's recommendation of Amendment to Chapter 56.

Definition of a Political Committee

Section fifty-six point two (56.2) subsection six (6) is amended to read as follows:

6. "Political committee" means a committee, but not a candidate's committee, ~~which shall consist of persons organized for the purpose of~~ which is composed of any organization or association, either permanent or created for the purpose of a political campaign, which accept~~ing~~s contributions, mak~~ing~~es expenditures, or incur~~ring~~s indebtedness in the aggregate of more than one hundred dollars in any one calendar year for the purpose of supporting or opposing ~~a~~ candidates for public office or ballot issues.

Explanation

This section clarifies the intent of Chapter 56 to include "in-place" organizations in the requirements for disclosure when such organizations engage in political activity. Current law defines the covered committees as only those organized for the purpose of such activity. Therefore, organizations organized originally for purposes other than political activity (such as trade associations, chambers of commerce, professional groups) could expend funds to promote or oppose candidates or ballot issues and circumvent the disclosure intended by Chapter 56 in the public interest.

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NO. 83-101

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

IOWANS FOR TAX RELIEF and DON CARVER,

Appellants,

vs.

THE CAMPAIGN FINANCE DISCLOSURE COMMISSION and DAN JOHNSTON,

Appellees.

ON APPEAL FROM THE
SUPREME COURT OF IOWA

MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

1. Whether Chapter 56, the Code of Iowa (1979), is unconstitutional to the extent it purports to require disclosure of the identity of contributors to ballot issue campaigns, vis a vis candidate elections, where the state has made no showing of compelling and subordinating governmental interests which justify compelled disclosure of the names of contributors to ballot issue campaigns that outweigh the rights of speech and privacy of association of those contributions.

2. Whether application of the disclosure requirements contained in Chapter 56, The Code of Iowa (1979), is unconstitutional since there is a reasonable probability that compelled disclosure of the identities of Iowans for Tax Relief's members and contributors will subject them to threats, harassment or reprisals from either government officials or private parties.

3. Whether the Iowa Supreme Court erred in failing to strictly construe the definition of "political committee" contained in Section 56.2(6), The Code of Iowa (1979), and resolve the ambiguities of the statute in favor of Iowans

for Tax Relief and its treasurer, Don Carver, where:

(a) The statute is a penal statute enforceable by criminal prosecution, and due process requires the statute provide sufficient notice of what conduct is proscribed; and

(b) The statute infringes upon First Amendment rights.

4. Whether the Iowa Supreme Court erred in determining that the amendment to the definition of "political committee" contained in Section 56.2(6), The Code of Iowa, which amendment was enacted by the Iowa legislature after the alleged criminal conduct, could be retroactively applied to the conduct of Iowans for Tax Relief and its treasurer, Don Carver.

5. Whether the requirement that a nonpartisan organization of continuous existence file detailed reports every 30 days following an election until the organization is dissolved is an unconstitutional burden on associational rights of permanent organizations.

6. Whether the Iowa District Court in a judicial review proceeding under Section 17A.19, The Code of Iowa (1979), the exclusive remedy for persons aggrieved by the actions of agencies such as the Campaign Finance Disclosure Commission, has subject matter jurisdiction over, and the power to stay, the Polk County Attorney, to whom the Commission referred an alleged violation of the reporting and disclosure requirements contained in Iowa Code Section 56.5, the Iowa Code (1979) for criminal prosecution.

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NO. 83-101

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

IOWANS FOR TAX RELIEF and DON CARVER,

Appellants,

vs.

THE CAMPAIGN FINANCE DISCLOSURE COMMISSION and DAN JOHNSTON,

Appellees.

ON APPEAL FROM THE
SUPREME COURT OF IOWA

MOTION TO DISMISS OR AFFIRM

The Appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Iowa on the grounds that the six questions presented by appeal: (1) are not within this Court's jurisdiction; (2) are not substantial federal questions;

or (3) were not properly raised and were not expressly passed on by the Iowa Supreme Court.

I. STATEMENT OF THE CASE

A. The Statute: This appeal raises questions concerning the application of the "Campaign Disclosure- Income Tax Checkoff Act" under Chapter 56 of the 1979 Code of Iowa.

The specific section of Chapter 56 involved in this appeal is § 56.2(6) which provides:

> "Political committee" means a committee, but not a candidate's committee, which shall consist of persons organized for the purpose of accepting contributions, making expenditures, or incurring indebtedness, in the aggregate of more than one hundred dollars in any one calendar year for the purpose of supporting or opposing a candidate for public office or ballot issue.

This section, as construed by the Iowa Supreme Court, defines as a political committee subject to disclosure

requirements persons who accept contributions, make expenditures, or incur indebtedness in excess of the statutory threshold for the purpose of supporting or opposing a candidate for public office or ballot issue.[1]

B. The Proceedings Below: The Iowa Campaign Finance Disclosure Commission filed a complaint against Iowans For Tax Relief on November 4, 1980, and alleged that Iowans for Tax Relief had accepted contributions in excess of one hundred dollars in support of a ballot issue but

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[1] In 1981 this language was amended to define a political committee as "a committee, but not a candidate's committee, which accepts contributions, makes expenditures, or incurs indebtedness in the aggregate of more than two hundred fifty dollars in any one calendar year for the purpose of supporting or opposing a candidate for public office or ballot issue." Iowa Code § 56.2(6) (1983).

had failed to file a Statement of Organization and an October 30, 1980 disclosure report. (Jurisdictional Statement 22)

The Commission held a hearing on December 16, 1980, and issued a decision on March 5, 1981. The Commission determined that Iowans for Tax Relief constituted a "political committee" under § 56.2(6) and, thereby, incurred filing obligations. The Commission found reasonable ground to believe that Iowans for Tax Relief had violated Chapter 56 by failing to file a Statement of Organization and an October 30, 1980 disclosure report. (Jurisdictional Statement 30-37)

The Iowa District Court for Muscatine County reversed the Commission on petition for judicial review of the agency decision in an order issued on October 13, 1981. (Jurisdictional Statement 39-49)

The Iowa Supreme Court reversed the district court on appeal in a decision

issued on March 16, 1983. (Jurisdictional Statement 50-64)

II. ARGUMENT

This Court should dismiss or, in the alternative, affirm the judgment of the Supreme Court of Iowa on each of six issues presented on the grounds considered separately below:

A. Whether Chapter 56, The Code of Iowa (1979), is unconstitutional to the extent it purports to require disclosure of the identity of contributors to ballot issue campaigns, vis a vis candidate elections, where the state has made no showing of compelling and subordinating governmental interests which justify compelled disclosure of the names of contributors to ballot issue campaigns that outweigh the rights of speech and privacy of association of those contributions.

The first issue raised by Iowans for Tax Relief in this appeal presents no substantial federal question. To be substantial a federal question must not be so foreclosed by prior decisions of the Supreme Court that no real controversy remains. See Palmer Oil Corp. v. Amerada

Corp., 343 U.S. 390, 392 (1952). This Court has already expressly approved the use of disclosure provisions in the context of corporate contributions and expenditures on ballot issues. In First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978), this Court explained its rationale for striking down a state law prohibiting corporate contributions and expenditures on ballot issues and further pointed out that "[c]orporate advertising, unlike some methods of participation in political campaigns, is likely to be highly visible" and "[i]dentification of the source of advertising may be required as a means of disclosure so that people will be able to evaluate the arguments to which they are being subjected." Id. at 792 n.32.

More recently in Citizens Against Rent Control v. Berkeley, 454 U.S. 290 (1981), this Court struck down a city ordinance limiting contributions to committees which

support or oppose ballot issues based, in part, on the rationale that the state interest of identifying supporters and opponents of ballot issues which was asserted in justification of the limitation was adequately protected by separate disclosure provisions of the ordinance. Id. at 298. This Court further clearly stated that "[t]he integrity of the political system will be adequately protected if contributors are identified in a public filing revealing the amounts contributed." Id. at 299.

The decisions of Bellotti and Berkeley leave no real controversy that a statute requiring disclosure of contributors to ballot issue campaigns is facially valid. Appellants present no specific challenge to Chapter 56 which would remove the issue from the umbrella of the Bellotti and Berkeley decisions.

B. Whether application of the disclosure requirements contained in Chapter 56, The Code of Iowa (1979), is unconstitutional since there is a reasonable probability that compelled disclosure of the identities of Iowans for Tax Relief's members and contributors will subject them to threats, harassment or reprisals from either government officials or private parties.

The second issue presented by Iowans for Tax Relief in this appeal is unsupported by any factual evidence upon which the issue can be further argued meaningfully to this Court. To substantiate a First Amendment claim it is Appellants' obligation to present proof of harassment which establishes a reasonable probability that disclosure would create a significant chilling effect. See Brown v. Socialist Workers '74 Campaign Committee, 103 S.Ct. 416 (1982); Buckley v. Valeo, 424 U.S. 1 (1976). In proceedings before the Campaign Finance Disclosure Commission, however, Iowans for Tax Relief failed to produce any evidence which would meet this criteria.

The evidence upon which Iowans for Tax Relief rely in their Jurisdictional Statement to support this issue on appeal consists of bald speculation on the part of David Stanley, president of the organization. (Jurisdictional Statement 89-95) This paucity of evidence led the Iowa Supreme Court to deal with the merits of this issue in one paragraph aptly concluding that "[a]s in Buckley, the record in the present case contains no evidence of harassment or any substantial basis for believing it would occur." Iowans for Tax Relief and Don Carver v. The Campaign Finance Disclosure Commission and Dan Johnston, 331 N.W.2d 862, 868 (Iowa 1983).

C. Whether the Iowa Supreme Court erred in failing to strictly construe the definition of "political committee" contained in Section 56.2(6), The Code of Iowa (1979), and resolve the ambiguities of the statute in favor of Iowans for Tax Relief and its treasurer, Don Carver, where:

(a) The statute is a penal statute enforceable by criminal prosecution, and due process requires the statute provide sufficient notice of what conduct is proscribed; and

(b) The statute infringes upon First Amendment rights.

The third issue presented by Iowans for Tax Relief in this appeal challenges the Iowa Supreme Court's construction of the state statute which defines those entities subject to disclosure obligations. See Iowa Code § 56.2(6) (1979). The highest court of the state, however, has binding authority to construe state law. Hortonville Joint School District No. 1 v. Hortonville Education Association, 426 U.S. 482, 488 (1976). Accordingly, Iowans for Tax Relief cannot challenge the construction decided by the Iowa Supreme Court but must challenge the constitutionality of the statute as construed. See II.A., II.B., supra.

D. Whether the Iowa Supreme Court erred in determining that the amendment to

the definition of "political committee" contained in Section 56.2(6), The Code of Iowa, which amendment was enacted by the Iowa legislature after the alleged criminal conduct, could be retroactively applied to the conduct of Iowans for Tax Relief and its treasurer, Don Carver.

The fourth issue presented by Iowans for Tax Relief in this appeal challenges construction of the state statute in light of a subsequent, clarifying amendment. For reasons discussed, II.C., supra, this issue is not reviewable.

E. Whether the requirement that a nonpartisan organization of continuous existence file detailed reports every 30 days following an election until the organization is dissolved is an unconstitutional burden on associational rights of permanent organizations.

The fifth issue presented by Iowans for Tax Relief raises a constitutional challenge to specific disclosure obligations imposed under § 56.6(1) which was not properly raised and not expressly passed on in state court. This Court has consistently refused to decide federal constitutional issues raised for the first

time on review of state court decision. Cardinale v. Louisiana, 394 U.S. 437, 438-39 (1969). This principle precludes the challenge mounted against § 56.6(1) of the Iowa Code at this stage in the proceedings.

Iowans for Tax Relief failed to challenge the thirty day filing requirement imposed under § 56.6(1) before the Iowa Supreme Court either on its face or as applied. Section 56.6(1) does require a committee supporting or opposing a ballot issue to file disclosure reports five days before the ballot issue appears on the printed ballot, thirty days after the final election in which the ballot issue appears on the printed ballot, and every thirty days until the committee dissolves. Iowa Code § 56.6(1) (1979). If no contributions have been accepted and no disbursements made, however, the disclosure report need only show the amount of cash on hand. Iowa

Code § 56.6(4) (1979). Iowans for Tax Relief did not undertake a facial challenge to this thirty-day requirement but referred to § 56.6(1) briefly in response to the Commission's position that it was contributors in opposition to the ballot issue not all members of the organization which must be disclosed. (App. 14) Indeed, the Iowa Supreme Court opinion does not acknowledge that such a challenge was made. (Jurisdictional Statement 50-64) Iowans for Tax Relief, moreover, could not have challenged this requirement as applied since they were only charged with failing to file a statement of organization and the initial disclosure report due five days before the ballot issue appeared on the ballot. (Jurisdictional Statement 24-27) The thirty-day filing requirement was never sought to be enforced against them.

F. Whether the Iowa District Court in a judicial review proceeding under Section 17A.19, The Code of Iowa (1979),

the exclusive remedy for persons aggrieved by the actions of agencies such as the Campaign Finance Disclosure Commission, has subject matter jurisdiction over, and the power to stay, the Polk County Attorney, to whom the Commission referred an alleged violation of the reporting and disclosure requirements contained in Iowa Code Section 56.5, the Iowa Code (1979) for criminal prosecution.

The sixth and final issue presented by Iowans for Tax Relief in this appeal, like issues C and D, supra, challenges the Iowa Supreme Court's construction of a state statute. In this instance, Iowans for Tax Relief seek review of the Iowa Supreme Court's construction of section 17A.19 of the Iowa Administrative Procedure Act under which, the Court concluded, the district court of Muscatine County was not conferred with jurisdiction to stay criminal proceedings in Polk County. The principle that the highest court of the state has binding authority to construe state law is applicable to procedural as well as substantive statutes. See Hortonville Joint

School District No. 1 v. Hortonville Education Association, 426 U.S. at 488. Accordingly, Iowans for Tax Relief is foreclosed from challenging the Iowa Supreme Court's construction of Chapter 17A as well as Chapter 56.

III. CONCLUSION

WHEREFORE, Appellee respectfully submits that the questions upon which this cause depends do not support this appeal and respectfully pray this Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in this cause by the Supreme Court of Iowa.

Respectfully submitted,

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APPENDIX A

EXCERPTS FROM APPELLANTS' IOWA SUPREME COURT BRIEF

DIVISION II. Requiring Iowans to Comply With the Disclosure Requirements of Chapter 56 Would be Unconstitutional.

> I confess that I find this episode somewhat perverse. It is disturbing because citizens of this nation should not be required to account to this court for engaging in debate of political issues. Indeed, since the days of the infamous Stamp Act, vigorous denunciation of "oppressive" rates of taxation, has enjoyed a long and notable history. Judge Kaufman (concurring) in FEC v. Central Long Island Tax Reform, etc., 616 F.2d 45 (2d Cir. 1980) at 54.

Chapter 56 as it existed in 1980 does not apply to Iowans for the reasons discussed in Division I. If it were applicable, its disclosure and reporting provisions with respect to Iowans would violate the United States and Iowa Constitutions. Forced disclosure of any or all of Iowans'

members and contributors would unconstitutionally infringe the rights of free speech and free private association of Iowans and its members and contributors.

A. Iowans Has a Protected Right of Corporate Free Speech.

Iowans for Tax Relief, a nonprofit corporation, has a right of free speech under the First Amendment to the United States Constitution, and Article I, Section 7 of the Constitution of the State of Iowa, (1857). First National Bank of Boston v. Bellotti, 435 U.S. 765, 55 L.Ed.2d 707, 98 S.Ct. 1407 (1978); Des Moines Register & Tribune v. Osmundson, 248 N.W.2d 493 (Iowa 1976).

Prior to Bellotti, it was believed a corporation's First Amendment rights were derived from its property rights under the Fourteenth Amendment. Bellotti rejected that notion, stating:

> This is an artificial mode of analysis, untenable under decisions of this Court.

435 U.S. at 779, 55 L.Ed.2d at 719, 98 S.Ct. at 1417. It is now undisputed that Iowans and other corporations have rights of free speech under the state and federal constitutions.

B. Iowans' Members and Contributors have Constitutional Rights of Association. Iowans has Standing to Assert These Rights.

Iowans' supporters have constitutional rights of association, which are recognized as necessary to the effective exercise of the other First Amendment rights. NAACP v. Alabama, 357 U.S. 449, 2 L.Ed.2d 1488, 78 S.Ct. 1163 (1958):

> Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. (Citations omitted.) It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause

> of the Fourteenth Amendment which embraces freedom of speech.

357 U.S. at 460, 2 L.Ed.2d at 1498, 78 S.Ct. at 1171.

The rights of citizens of this state to participate in organizations such as Iowans for Tax Relief to effectively promote their common interests cannot be disputed, and Iowans has standing to assert the rights of its members. NAACP v. Alabama, 357 U.S. at 458-9, 2 L.Ed.2d at 1497, 78 S.Ct. at 1170.

All contributors to Iowans are regarded as members for the purpose of these constitutional rights, for two reasons.

First, Iowans' by-laws provide that each contributor automatically becomes a member. Members set their own dues and may join Iowans either by giving money or pledging time. App. pp. 168-169.

Secondly, the U.S. Supreme Court decisions in this area "have not drawn fine lines between contributors and members but have treated them interchangeably." Buckley v. Valeo, 424 U.S. 1, 66, 46 L.Ed.2d 659, 714, 96 S.Ct. 612, 657 (1976).

C. Compelled Disclosure of Names of Members or Contributors Infringes First Amendment Rights of Free Private Association. To Uphold Such Disclosure, the State Must Show That It Has a Compelling and Subordinating Interest and that there is a Substantial Relation Between the Governmental Interest and the Information to be Disclosed.

NAACP v. Alabama, 357 U.S. 449, 2 L.Ed.2d 1488, 78 S.Ct. 1163 (1958) held that the State of Alabama could not compel the NAACP to disclose its membership list because disclosure would be a restraint on freedom of private association:

> [S]tate action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny. . . .
>
> It is hardly a novel perception that compelled disclosure of

> affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved. This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. . . .
>
> Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.

NAACP v. Alabama, 357 U.S. at 461-462, 2 L.Ed.2d 1488 at 1499-1500, 78 S.Ct. at 1171.

The same rule applies to compelled disclosure of names of contributors, so contributors and members are treated "interchangeably":

> . . . The right to join together "for the advancement of beliefs and ideas," [citation omitted], is diluted if it does not include the right to pool money through contributions, for funds are

> often essential if "advocacy" is to be truly or optimally "effective." Moreover, the invasion of privacy of belief may be as great when the information sought concerns the giving and spending of money as when it concerns the joining of organizations. . . .

Buckley v. Valeo, 424 U.S. at 65-66, 46 L.Ed.2d at 714, 96 S.Ct. at 657.

When state action infringes upon constitutional rights of speech and association, the burden is on the state to show a state interest which is both compelling and subordinating. The state's claim must survive "exacting scrutiny." Furthermore, the state must use means closely drawn to avoid unnecessary abridgement of constitutional rights and must show a "relevant correlation" or "substantial relation" between the governmental interest and the information required to be disclosed. First National Bank of Boston v. Bellotti, 435 U.S. 765, 786, 55 L.Ed.2d 707, 724, 98 S.Ct. 1407, 1421 (1978); Buckley v. Valeo,

424 U.S. 1, 25, 46 L.Ed.2d 659, 691, 96 S.Ct. 612, 638 (1976).

D. The State has Not Met its Burden to Show a Compelling and Subordinating Interest that Justifies Infringing the Constitutional Rights of Iowans' Members by Forced Disclosure.

The record shows that members of Iowans particularly need protection of their privacy. Iowans' anti-tax and anti-spending stands have incurred the opposition of powerful governmental and private interests. Members who are government employees, do business with any government, or need a governmental permit are especially vulnerable to retaliation. The chilling effect on the rights of Iowans' members if Iowans is forced to disclose members' names is as obvious as was Alabama's motive in demanding the NAACP's membership list. App. pp. 199-200, 210-213.

Commission offered no evidence to the contrary.

Commission has also failed to show any compelling and subordinating state interest that would justify forced disclosure of the names of Iowans' members who contribute more than $25, or the unreasonable and perpetual reporting burden on Iowans discussed in § E of Division I above.

Buckley v. Valeo was the first modern authority to consider the constitutionality of campaign finance regulation. Cf. Burroughs v. United States, 290 U.S. 534, 78 L.Ed. 484, 54 S.Ct. 287 (1934). Buckley addressed the Federal Election Campaign Act (2 U.S.C. § 431 et. seq.; 18 U.S.C. § 591 et. seq., and 26 U.S.C. § 9001 et. seq.) upholding and striking down various provisions. Buckley recognized that reporting and disclosure requirements infringe upon protected interests recognized in NAACP v. Alabama and its progeny. However, three compelling and subordinating interests justified the infringement:

1. Providing information to the voters to evaluate the tendencies of candidates by indicating the sources of their support;

2. Deterring actual corruption and the appearance of corruption by exposing large contributions to candidates; and

3. Providing recordkeeping for purposes of enforcing the expenditure limitations contained in the Federal Act.

424 U.S. at 66-68, 46 L.Ed.2d at 714-715, 96 S.Ct. at 657-658.

These governmental interests do not apply to Iowans' participation in the constitutional convention ballot issue. Chapter 56 does not contain any expenditure limitation so there is no governmental interest in recordkeeping. The other governmental interests noted in Buckley apply to candidate elections and do not

justify constitutional infringement in the context of a ballot issue.

Bellotti recognized the differences between candidate elections and referenda:

> Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections (citations omitted) simply is not present in a popular vote on a public issue. To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it: The Constitution "protects expression which is eloquent no less than that which is unconvincing." (citation omitted)

435 U.S. at 790, 55 L.Ed.2d at 726-27, 98 S.Ct. at 1423.

The requirements of Chapter 56 for disclosure of contributions to candidates are presumably constitutional for the reasons stated in Buckley. However, the disclosure and reporting requirements for ballot issue committees may well be

facially invalid. Certainly they are unconstitutional as applied to Iowans.

Iowans has found no authority upholding disclosure requirements in the context of a ballot issue.

Commission has avoided addressing the constitutional issues, and has totally failed to meet its heavy burden to show a compelling and subordinating state interest and overcome the other strict tests established by the U.S. Supreme Court decisions cited in § C above.

New York Civil Liberties Union, Inc. v. Acito, 459 F.Supp. 75 (S.D. N.Y. 1978), cited by Commission, struck down a provision of the New York election law defining a political committee as:

> Any corporation aiding or promoting and any committee or combination of one or more persons operating or cooperating to aid or promote the success or defeat of a political party or principle, or any other questions

> submitted to vote at a public election. . . .

459 F.Supp. at 78.

The statute was struck down as overbroad. The Federal District Court held it would be upheld only if narrowly construed to require disclosure of contributions to a permanent organization specifically "earmarked" for use in the ballot issue campaign. 459 F.Supp. at 85. Because no state decision had placed such a narrowing construction on the statute, the Federal Court struck down the provision in its entirety as overbroad.

Before the District Court, Commission belatedly attempted to narrow the scope of disclosure required by Chapter 56, stating:

> Under the Commission's theory a committee need disclose only those contributors who contributed in connection with the ballot issue and not general dues paying members or contributors prior to or otherwise separate from the ballot issue. Under this theory ISEA, like Iowans, would have had to disclose the

> source of contributors who made special contributions, beyond general dues, which could reasonably have been expected to reach the Committee to Protect the Constitution.

The Campaign Finance Disclosure Commission's Brief, p. 11, filed August 31, 1981.

Commission's attempt to bring its action within constitutional bounds in reliance on Acito fails. The validity of Acito as precedent is questionable since the case was decided shortly after Bellotti and does not cite that controlling authority. In any event, the state cannot require permanent organizations to disclose anyting more than "earmarked" contributions and the record is clear and uncontroverted that Iowans refused earmarked contributions. App. pp. 165-166, 178, 196-198, 227, 239-240. If Commission sought nothing more than "earmarked" contributions there would be nothing to disclose.

However, it is not permissible to place a sufficiently narrowing construction on Chapter 56 to remove its unconstitutionality. Chapter 56 expressly requires a permanent organization that becomes a ballot issue committee to disclose every receipt in excess of $25 and every expenditure of $5 or more, in perpetuity. § 56.6(1), (3)(b), (c) and (g), The Code (1979). The 1981 amendment does not change this.

Moreover, the constitutionality of Chapter 56 must be determined as it read in 1980. To compel this disclosure, Commission must have reasonable grounds to believe Iowans was a political committee which, at the time of the alleged offense, required Iowans be "organized for the purpose of" political activity. The District Court dismissed the complaint because there was no showing Iowans was organized for any purposes other than those set out

in its Articles of Incorporation. However, if Iowans were a "political committee" then the disclosure requirements of Chapter 56 would impose an unconstitutional burden when applied to permanent organizations like Iowans.

The disclosure and reporting requirements of Chapter 56 are plainly unconstitutional if applied to Iowans. Commission bears an especially heavy burden in attempting to justify the infringement of forced disclosure on rights of free speech and free private association. Commission has filed to meet that burden.

However, this Court need not reach the constitutional issues if the District Court's decision is affirmed on any of the statutory grounds discussed in Division I.

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No. 83-101

In the Supreme Court of the United States

October 1983 Term

Iowans for Tax Relief and Don Carver,
Appellants

vs.

The Campaign Finance Disclosure Commission and Dan Johnston,
Appellees.

On appeal from the Supreme Court of Iowa

BRIEF IN OPPOSITION TO MOTION TO DISMISS

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TABLE OF AUTHORITIES

Buckley v. Valeo, 424 U.S. 1, 46 L.Ed.2d 659, 96 S. Ct. 612 (1976) 3

C & C Plywood Corp. v. Hanson, 583 F.2d 421 (9th Cir. 1978) 3

Citizens Against Rent Control v. Berkeley, 454 U.S. 290, 70 L.Ed.2d 492, 102 S. Ct. 434 (1981) 3

First National Bank of Boston v. Bellotti, 435 U.S. 765, 55 L.Ed.2d 707, 98 S. Ct. 1407 (1978) 3

Let's Help Florida v. McCrary, 621 F.2d 195 (5th Cir. 1980) 3

Mishkin v. New York, 383 U.S. 502, 16 L.Ed.2d 56, 86 S. Ct. 958 (1966) 2

Mullaney v. Wilbur, 421 U.S. 684, 44 L.Ed.2d 508, 95 S. Ct. 1881 (1975) 4

New York Civil Liberties Union, Inc. v. Acito, 459 F. Supp. 75 (S.D. N.Y. 1978) 3

Weaver v. Graham, 450 U.S. 24, 67 L.Ed.2d 17, 101 S. Ct. 960 (1981) 4

INTRODUCTION

The Campaign Finance Disclosure Commission, having filed a Motion to Dismiss or Affirm, and Dan Johnston, Polk County Attorney, having sought and obtained an extension of time to file a response to the jurisdictional statement of Iowans for Tax Relief and Don Carver, but having not filed any response within the period of extension, Appellants Iowans for Tax Relief and Don Carver now submit this Brief in Opposition to Motion to Dismiss or Affirm.

The questions presented by this appeal fall within this Court's jurisdiction. Issue I challenges the validity of an Iowa statute as unconstitutional, which statute was upheld, 28 U.S.C. 1257(2), and the remaining issues claim rights under the United States Constitution, a basis for certiorari jurisdiction under 28 U.S.C. 1257(3), and are properly included in the jurisdictional statement under *Mishkin v. New York*, 383 U.S. 502, 512, 16 L.Ed.2d 56, 86 S. Ct. 958 (1966).

The substantiality of constitutional issues involving election law regulation are manifest. Substantiality is heightened by the thusfar successful attempt of the State of Iowa to retroactively apply an amendment to a criminal statute.

All issues were raised by Iowans in its Petition for Review of Agency Action, filed March 30, 1981, other than the issue of the retroactive application of the amendment to the definition of "political committee" contained in Iowa Code Section 56.2(6). Since the amendment was enacted subsequent to the filing of the Petition, while the Petition was pending before the district court, that issue was timely raised before the Iowa Supreme Court. The Commission attempts to imply all constitutional issues were not raised before the Iowa Supreme Court, and its incomplete excerpt of Iowans' Supreme Court Brief does not tell the full story. Iowans has requested, pursuant to Supreme Court Rule 13.1, that a certified copy of its Iowa Supreme Court Brief be transmitted to this Court. The claim the issue was not raised, Motion, pages 11-13, is untrue. That issue was raised in Iowans' initial Petition, App. p. 84, and was raised before the Iowa Supreme Court, Supreme Court Brief p. 21. The Commission's assertion, Motion, p. 13, is untrue and misleading. To support a Motion to Dismiss under Supreme Court Rule 16.1(b), the

movant must show the question was not timely or properly raised *and* not expressly passed upon. The questions were raised, and the failure of the Iowa Supreme Court to pass upon or address those issues has necessitated review by this Court.

I.

The basic issue of the constitutionality of disclosure in the context of a ballot issue has never been determined by the U.S. Supreme Court, and is not foreclosed by any prior decision.

Buckley v. Valeo, 424 U.S. 1, 46 L.Ed.2d 659, 96 S. Ct. 612 (1976) did not challenge disclosure requirements as unconstitutional per se. 424 U.S. at 60. *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 55 L.Ed.2d 707, 98 S. Ct. 1407 (1978) held the interests which justify compelled disclosure in candidate elections do not apply to referenda. Fn. 32, 435 U.S. at 792 merely provides the identity of an advertiser must be disclosed, but does not sanction or require disclosure of the contributors to the advertiser. *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290, 70 L.Ed.2d 492, 102 S. Ct. 434 (1981) did not sanction or require disclosure of contributors to ballot issue campaigns, but struck down contribution limitations in the context of ballot issues (which limitations are constitutional as applied to candidate elections) since disclosure would be a less restrictive alternative to accomplish any legitimate governmental interest in maintaining voter confidence in the electoral process. 454 U.S. at 299.

It should also be noted Iowans has not found any reported decision, prior to the decision in this case, which failed to sustain a constitutional challenge to regulation of financing of referenda, vis a vis candidate elections. *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290, 70 L.Ed.2d 492, 102 S. Ct. 434 (1981), *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 55 L.Ed.2d 707, 98 S. Ct. 1407 (1978), *C & C Plywood Corp. v. Hanson*, 583 F.2d 421 (9th Cir. 1978), *Let's Help Florida v. McCrary*, 621 F.2d 195 (5th Cir. 1980), *New York Civil Liberties Union, Inc. v. Acito*, 459 F. Supp. 75 (S.D. N.Y. 1978).

II.

Iowans for Tax Relief made an uncontroverted showing that disclosure of the identities of Iowans' supporters would subject them to a reasonable probability of threats, harassment or reprisals. No evidence was offered to the contrary, and in fact no evidence of any governmental interest justifying disclosure was presented. The Commission, which has the initial burden to justify an infringement upon First Amendment rights, did not even attempt to present a showing of any need for disclosure.

Buckley v. Valeo recognized the need for "flexibility" of proof, and stated:

> New parties that have no history upon which to draw may be able to offer evidence of reprisals and threats directed against individuals or organizations holding similar views.

424 U.S. at 74.

III.

The Iowan Supreme Court cannot impose a broad construction on a penal statute in derogation of First Amendment rights, and leave the U.S. Supreme Court powerless to correct this infringement. A decision by the highest state court is not binding on this court where the state Supreme Court has evaded the federal issues, *Mullaney v. Wilbur*, 421 U.S. 684, 691, 44 L.Ed.2d 508, 95 S. Ct. 1881 (1975) such as (a) the failure to give strict construction to a penal statute in derogation of constitutional rights; and (b) the attempt to retroactively apply an amendment to a penal statute.

IV.

The "clarifying amendment", Motion, p. 11, cannot be applied to Iowans in this proceeding, which seeks to enforce a criminal statute, and will give rise to collateral estoppel effects in any subsequent criminal prosecution. You cannot retroactively apply an amendment to a penal statute, *Weaver v. Graham*, 450 U.S. 24, 28-9, 67 L.Ed.2d 17, 101 S. Ct. 960 (1981) and it is obvious you cannot clarify the criminal statute.

V.

The Commission's claim that the issue of the perpetual disclosure requirement was not properly raised is untrue, as shown by Iowans' initial Petition, and by its brief on appeal. The Iowa Supreme Court's failure to address this issue speaks to its superficial analysis of the important constitutional issues raised in this case, and its failure to appreciate the grave implications of its affirmance of an unconstitutional statute.

VI.

The Polk County Attorney sought an extension of time to file a motion to dismiss or affirm, but failed to do so. Therefore, since the interested party has not contested this issue, the Supreme Court should consider it to insure Iowans is protected, pendente lite, against any further attempt to initiate a criminal prosecution.

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